

DOCUMENT RESUME

ED 098 925

IR 001 290

TITLE An Act for the General Revisions of the Copyright Law, Title 17 of the United States Code, and for Other Purposes. Senate Bill 1361. Ninety-Third Congress, Second Session.

INSTITUTION Congress of the U.S., Washington, D.C. House Committee on the Judiciary.

PUB DATE 12 Sep 74

NOTE 81p.

EDRS PRICE MF-\$0.75 HC-\$4.20 PLUS POSTAGE

DESCRIPTORS *Administrative Agencies; Cable Television; *Copyrights; *Federal Legislation; *Information Dissemination; Information Systems; Phonotape Recordings; *Reprography

IDENTIFIERS *Copyright Revision Bill; Fair Use

ABSTRACT

This text of Senate Bill 1361, placed before the 93rd session of the United States Congress, proposes a number of revisions in the federal copyright law. The bill defines the terminology of copyright and stipulates exclusive rights in copyrighted works, including print materials; sound recordings; pictorial, graphic, and sculptural works; and performances. The limitations on exclusive rights are defined with respect to: fair use, reproduction by libraries and archives, effect of transfer of a particular copy or phonorecord, exemption of certain performances and displays, ephemeral recordings, and secondary transmissions, including details on transmission by cable systems. The scope of exclusive rights is specified in terms of use in conjunction with computers and similar information systems. The bill also outlines ownership, transfer, and duration of a copyright; copyright notice, deposit, and registration; provisions for foreign works; infringement penalties; and the functioning of the Copyright Office and the Copyright Royalty Tribunal. (SL)

ED 090725

U.S. DEPARTMENT OF HEALTH
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
EDUCATION
REPRODUCTION OF THIS DOCUMENT
HAS BEEN MADE BY THE NATIONAL
INSTITUTE OF EDUCATION FROM
THE ORIGINAL WHICH WAS OBTAINED
FROM THE U.S. GOVERNMENT PRINTING
OFFICE. THE NATIONAL INSTITUTE OF
EDUCATION IS NOT RESPONSIBLE FOR
ANY REPRODUCTION OF THIS DOCUMENT.

93d CONGRESS
2d SESSION

S. 1361

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 12, 1974

Referred to the Committee on the Judiciary

AN ACT

For the general revisions of the Copyright Law, title 17 of the United States Code, and for other purposes.

1 *Be it enacted by the Senate and House of Representatives of the*
2 *United States of America in Congress assembled,*

3 TITLE I—GENERAL REVISION OF COPYRIGHT LAW

4 Sec. 101. Title 17 of the United States Code, entitled "Copyrights".
5 is hereby amended in its entirety to read as follows:

6 TITLE 17—COPYRIGHTS

CHAPTER	Sec.
1. SUBJECT MATTER AND SCOPE OF COPYRIGHT.....	101
2. COPYRIGHT OWNERSHIP AND TRANSFER.....	201
3. DURATION OF COPYRIGHT.....	301
4. COPYRIGHT NOTICE, DEPOSIT, AND REGISTRATION.....	401
5. COPYRIGHT INFRINGEMENT AND REMEDIES.....	501
6. MANUFACTURING REQUIREMENT AND IMPORTATION.....	601
7. COPYRIGHT OFFICE.....	701
8. COPYRIGHT ROYALTY TRIBUNAL.....	801

7 Chapter 1.—SUBJECT MATTER AND SCOPE OF COPYRIGHT

- Sec.
- 101. Definitions.
 - 102. Subject matter of copyright: In general.
 - 103. Subject matters of copyright: Compilations and derivative works.
 - 104. Subject matter of copyright: National origin.
 - 105. Subject matter of copyright: United States Government works.
 - 106. Exclusive rights in copyrighted works.
 - 107. Limitations on exclusive rights: Fair use.
 - 108. Limitations on exclusive rights: Reproduction by libraries and archives.

2001420
ERIC
Full Text Provided by ERIC

TITLE 17—COPYRIGHTS—Continued
Chapter 1.—SUBJECT MATTER AND SCOPE OF
COPYRIGHT—Continued

Sec.

- 109. Limitations on exclusive rights: Effect of transfer of particular copy or phonorecord.
- 110. Limitations on exclusive rights: Exemption of certain performances and displays.
- 111. Limitations on exclusive rights: Secondary transmissions.
- 112. Limitations on exclusive rights: Ephemeral recordings.
- 113. Scope of exclusive rights in pictorial, graphic, and sculptural works.
- 114. Scope of exclusive rights in sound recordings.
- 115. Scope of exclusive rights in nondramatic musical works: Compulsory license for making and distributing phonorecords.
- 116. Scope of exclusive right in nondramatic musical works and sound recordings: Public performances by means of coinoperated phonorecord players.
- 117. Scope of exclusive rights: Use in conjunction with computers and similar information systems.

§ 101. Definitions

As used in this title, the following terms and their variant forms mean the following:

An "anonymous work" is a work on the copies or phonorecords of which no natural person is identified as author.

"Audiovisual works" are works that consist of a series of related images which are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied.

The "best edition" of a work is the edition, published in the United States at any time before the date of deposit, that the Library of Congress determines to be most suitable for its purposes.

A person's "children" are his immediate offspring, whether legitimate or not, and any children legally adopted by him.

A "collective work" is a work, such as a periodical issue, anthology, or encyclopedia, in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole.

A "compilation" is a work formed by the collection and assembling of pre-existing materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship. The term "compilation" includes collective works.

"Copies" are material objects, other than phonorecords, in which a work is fixed by any method now known or later developed, and from which the work can be perceived, reproduced, or otherwise

1 communicated, either directly or with the aid of a machine or
 2 device. The term "copies" includes the material object, other than
 3 a phonorecord, in which the work is first fixed.

4 "Copyright owner," with respect to any one of the exclusive
 5 rights comprised in a copyright, refers to the owner of that par-
 6 ticular right.

7 A work is "created" when it is fixed in a copy or phonorecord
 8 for the first time: where a work is prepared over a period of time,
 9 the portion of it that has been fixed at any particular time con-
 10 stitutes the work as of that time, and where the work has been
 11 prepared in different versions, each version constitutes a separate
 12 work.

13 A "derivative work" is a work based upon one or more pre-
 14 existing works, such as a translation, musical arrangement, dram-
 15 atization, fictionalization, motion picture version, sound record-
 16 ing, art reproduction, abridgment, condensation, or any other
 17 form in which a work may be recast, transformed, or adapted. A
 18 work consisting of editorial revisions, annotations, elaborations,
 19 or other modifications which, as a whole, represent an original
 20 work of authorship, is a "derivative work."

21 A "device," "machine," or "process" is one now known or later
 22 developed.

23 To "display" a work means to show a copy of it, either directly
 24 or by means of a film, slide, television image, or any other device
 25 or process or, in the case of a motion picture or other audiovisual
 26 work, to show individual images nonsequentially.

27 A work is "fixed" in a tangible medium of expression when its
 28 embodiment in a copy or phonorecord, by or under the authority
 29 of the author, is sufficiently permanent or stable to permit it to
 30 be perceived, reproduced, or otherwise communicated for a period
 31 of more than transitory duration. A work consisting of sounds,
 32 images, or both, that are being transmitted, is "fixed" for pur-
 33 poses of this title if a fixation of the work is being made simultane-
 34 ously with its transmission.

35 The terms "including" and "such as" are illustrative and not
 36 limitative.

37 A "joint work" is a work prepared by two or more authors
 38 with the intention that their contributions be merged into insepa-
 39 rable or interdependent parts of a unitary whole.

40 "Literary works" are works other than audiovisual works,

expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material objects, such as books, periodicals, manuscripts, photorecords, or film, in which they are embodied.

"Motion pictures" are audiovisual works consisting of a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.

To "perform" a work means to recite, render, play, dance, or act it, either directly or by means of any device or process or, in the case of a motion picture or other audiovisual work, to show its images in any sequence or to make the sounds accompanying it audible.

"Phonorecords" are material objects in which sounds other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term "phonorecords" includes the material object in which the sounds are first fixed.

"Pictorial, graphic, and sculptural works" include two-dimensional and three-dimensional works of fine, graphic, and applied art, photographs, prints and art reproductions, maps, globes, charts, plans, diagrams, and models.

A "pseudonymous work" is a work on the copies or phonorecords, of which the author is identified under a fictitious name.

"Publication" is the distribution of copies or photorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication. A public performance or display of a work does not of itself constitute publication.

To perform or display a work "publicly" means:

(1) to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered;

(2) to transmit or otherwise communicate a performance or display of the work to a place specified by clause (1) or to the public, by means of any device or process, whether the

1 members of the public capable of receiving the performance
2 or display receive it in the same place or in separate places
3 and at the same time or at different times.

4 "Sound recordings" are works that result from the fixation of
5 a series of musical, spoken, or other sounds, but not including the
6 sounds accompanying a motion picture or other audiovisual work,
7 regardless of the nature of the material objects, such as disks,
8 tapes, or other phonorecords, in which they are embodied.

9 "State" includes the District of Columbia and the Common-
10 wealth of Puerto Rico, and any territories to which this title is
11 made applicable by an act of Congress.

12 A "transfer of copyright ownership" is an assignment, mort-
13 gage, exclusive license, or any other conveyance, alienation, or
14 hypothecation of a copyright or of any of the exclusive rights
15 comprised in a copyright, whether or not it is limited in time or
16 place of effect, but not including a nonexclusive license.

17 A "transmission program" is a body of material that, as an
18 aggregate, has been produced for the sole purpose of transmission
19 to the public in sequence and as a unit.

20 To "transmit" a performance or display is to communicate it
21 by any device or process whereby images or sounds are received
22 beyond the place from which they are sent.

23 The "United States," when used in a geographical sense, com-
24 prises the several States, the District of Columbia and the Com-
25 monwealth of Puerto Rico, and the organized territories under
26 the jurisdiction of the United States Government.

27 A "useful article" is an article having an intrinsic utilitarian
28 function that is not merely to portray the appearance of the
29 article or to convey information. An article that is normally a part
30 of a useful article is considered a "useful article."

31 The author's "widow" or "widower" is the author's surviving
32 spouse under the law of his domicile at the time of his death,
33 whether or not the spouse has later remarried.

34 A "work of the United States Government" is a work prepared
35 by an officer or employee of the United States Government as part
36 of his official duties.

37 A "work made for hire" is:

38 (1) a work prepared by an employee within the scope of
39 his employment; or

1 (2) a work specially ordered or commissioned for use as
 2 a contribution to a collective work, as a part of a motion pic-
 3 ture or other audiovisual work, as a translation, as a supple-
 4 mentary work, as a compilation, as an instructional text, as
 5 a test, as answer material for a test, as a photographic or
 6 other portrait of one or more persons, or as an atlas, if the
 7 parties expressly agree in a written instrument signed by
 8 them that the work shall be considered a work made for hire.
 9 A "supplementary work" is a work prepared for publication
 10 as a secondary adjunct to a work by another author for the
 11 purpose of introducing, concluding, illustrating, explaining,
 12 revising, commenting upon, or assisting in the use of the other
 13 work, such as forewords, afterwords, pictorial illustrations,
 14 maps, charts, tables, editorial notes, musical arrangements,
 15 answer material for tests, bibliographies, appendixes, and
 16 indexes. An "instructional text" is a literary, pictorial, or
 17 graphic work prepared for publication with the purpose of
 18 use in systematic instructional activities.

19 **§ 102. Subject matter of copyright: In general**

20 (a) Copyright protection subsists, in accordance with this title, in
 21 original works of authorship fixed in any tangible medium of expres-
 22 sion, now known or later developed, from which they can be perceived,
 23 reproduced, or otherwise communicated, either directly or with the aid
 24 of a machine or device. Works of authorship include the following
 25 categories:

- 26 (1) literary works;
- 27 (2) musical works, including any accompanying words;
- 28 (3) dramatic works, including any accompanying music;
- 29 (4) pantomimes and choreographic works;
- 30 (5) pictorial, graphic, and sculptural works;
- 31 (6) motion pictures and other audiovisual works;
- 32 (7) sound recordings.

33 (b) In no case does copyright protection for an original work of
 34 authorship extend to any idea, plan, procedure, process, system, method
 35 of operation, concept, principle, or discovery, regardless of the form
 36 in which it is described, explained, illustrated, or embodied in such
 37 work.

38 **§ 103. Subject matter of copyright: Compilations and derivative**
 39 **works**

40 (a) The subject matter of copyright as specified by section 102 in-

1 includes compilations and derivative works, but protection for a work
 2 employing pre-existing material in which copyright subsists does not
 3 extend to any part of the work in which such material has been used
 4 unlawfully.

5 (b) The copyright in a compilation or derivative work extends only
 6 to the material contributed by the author of such work, as dis-
 7 tinguished from the pre-existing material employed in the work,
 8 and does not imply any exclusive right in the pre-existing material.
 9 The copyright in such work is independent of, and does not affect
 10 or enlarge the scope, duration, ownership, or subsistence of, any copy-
 11 right protection in the pre-existing material.

12 **§ 104. Subject matter of copyright: National origin**

13 (a) UNPUBLISHED WORKS.—The works specified by sections 102 and
 14 103, while unpublished, are subject to protection under this title with-
 15 out regard to the nationality or domicile of the author.

16 (b) PUBLISHED WORKS.—The works specified by sections 102 and
 17 103, when published, are subject to protection under this title if—

18 (1) on the date of first publication, one or more of the authors
 19 is a national or domiciliary of the United States, or is a national,
 20 domiciliary, or sovereign authority of a foreign nation that is a
 21 party to a copyright treaty to which the United States is also a
 22 party; or

23 (2) the work is first published in the United States or in a for-
 24 eign nation that, on the date of first publication, is a party to the
 25 Universal Copyright Convention of 1952; or

26 (3) the work is first published by the United Nations or any
 27 of its specialized agencies, or by the Organization of American
 28 States; or

29 (4) the work comes within the scope of a Presidential procla-
 30 mation. Whenever the President finds that a particular foreign
 31 nation extends, to works by authors who are nationals or domicili-
 32 aries of the United States or to works that are first published in
 33 the United States, copyright protection on substantially the same
 34 basis as that on which the foreign nation extends protection to
 35 works of its own nationals and domiciliaries and works first pub-
 36 lished in that nation, he may by proclamation extend protection
 37 under this title to works of which one or more of the authors is,
 38 on the date of first publication, a national, domiciliary, or sov-
 39 ereign authority of that nation, or which was first published in
 40 that nation. The President may revise, suspend, or revoke any

1 such proclamation or impose any conditions or limitations on
2 protection under a proclamation.

3 (c) The expropriation, by a governmental organization of a for-
4 eign country, of a copyright, or the right to secure a copyright, or
5 any right comprised in a copyright, or any right in a work for which
6 copyright may be secured, or the transfer of a copyright or of any such
7 right, or the power to authorize any use of the work thereunder, from
8 the author or copyright owner to a governmental agency of a foreign
9 country pursuant to any law, decree, regulation, order or other action
10 of the government effecting or requiring such transfer, shall not be
11 given effect for the purposes of this title.

12 **§ 105. Subject matter of copyright: United States Government**
13 **works**

14 Copyright protection under this title is not available for any work
15 of the United States Government, but the United States Government
16 is not precluded from receiving and holding copyrights transferred
17 to it by assignment, bequest, or otherwise.

18 **§ 106. Exclusive rights in copyrighted works**

19 Subject to sections 107 through 117, the owner of copyright under
20 this title has the exclusive rights to do and to authorize any of the
21 following:

22 (1) to reproduce the copyrighted work in copies or phono-
23 records;

24 (2) to prepare derivative works based upon the copyrighted
25 work;

26 (3) to distribute copies or phonorecords of the copyrighted
27 work to the public by sale or other transfer of ownership, or by
28 rental, lease, or lending;

29 (4) in the case of literary, musical, dramatic, and choreographic
30 works, pantomimes, motion pictures and other audiovisual works,
31 to perform the copyrighted work publicly;

32 (5) in the case of literary, musical, dramatic and choreographic
33 works, pantomimes, and pictorial, graphic, or sculptural works,
34 including the individual images of a motion picture or other
35 audiovisual work, to display the copyrighted work publicly.

36 **§ 107. Limitations on exclusive rights: Fair use**

37 Notwithstanding the provisions of section 106, the fair use of a
38 copyrighted work, including such use by reproduction in copies or
39 phonorecords or by any other means specified by that section, for pur-
40 poses such as criticism, comment, news reporting, teaching, scholar-

1 ship, or research, is not an infringement of copyright. In determining
2 whether the use made of a work in any particular case is a fair use
3 the factors to be considered shall include:

- 4 (1) the purpose and character of the use;
- 5 (2) the nature of the copyrighted work;
- 6 (3) the amount and substantiality of the portion used in re-
7 lation to the copyrighted work as a whole; and
- 8 (4) the effect of the use upon the potential market for or value
9 of the copyrighted work.

10 **§ 108. Limitations on exclusive rights: Reproduction by libraries**
11 **and archives**

12 (a) Notwithstanding the provisions of section 106, it is not an in-
13 fringement of copyright for a library or archives, or any of its em-
14 ployees acting within the scope of their employment, to reproduce no
15 more than one copy or phonorecord of a work, or distribute such copy
16 or phonorecord, under the conditions specified by this section, if:

- 17 (1) The reproduction or distribution is made without any pur-
18 pose of direct or indirect commercial advantage;
- 19 (2) The collections of the library or archives are (i) open to the
20 public, or (ii) available not only to researchers affiliated with the
21 library or archives or with the institution of which it is a part, but
22 also to other persons doing research in a specialized field; and
- 23 (3) The reproduction or distribution of the work includes a
24 notice of copyright.

25 (b) The rights of reproduction and distribution under this section
26 apply to a copy or phonorecord of an unpublished work duplicated in
27 facsimile form solely for purposes of preservation and security or for
28 deposit for research use in another library or archives of the type de-
29 scribed by clause (2) of subsection (a), if the copy or phonorecord
30 reproduced is currently in the collections of the library or archives.

31 (c) The right of reproduction under this section applies to a copy
32 or phonorecord of a published work duplicated in facsimile form solely
33 for the purpose of replacement of a copy or phonorecord that is dam-
34 aged, deteriorating, lost, or stolen, if the library or archives has, after
35 a reasonable effort, determined that an unused replacement cannot be
36 obtained at a fair price.

37 (d) The rights of reproduction and distribution under this section
38 apply to a copy, made from the collection of a library or archives
39 where the user makes his request or from that of another library or
40 archives, of no more than one article or other contribution to a copy-

1 righted collection or periodical issue, or to a copy or phonorecord of a
2 small part of any other copyrighted work, if:

3 (1) The copy becomes the property of the user, and the library
4 or archives has had no notice that the copy would be used for any
5 purpose other than private study, scholarship, or research; and

6 (2) The library or archives displays prominently, at the place
7 where orders are accepted, and includes on its order form, a warn-
8 ing of copyright in accordance with requirements that the Reg-
9 ister of Copyrights shall prescribe by regulation.

10 (e) The rights of reproduction and distribution under this section
11 apply to the entire work, or to a substantial part of it, made from the
12 collection of a library or archives where the user makes his request or
13 from that of another library or archives, if the library or archives has
14 first determined, on the basis of a reasonable investigation that a copy
15 or phonorecord of the copyrighted work cannot be obtained at a fair
16 price, if:

17 (1) The copy becomes the property of the user, and the library
18 or archives has had no notice that the copy would be used for any
19 purpose other than private study, scholarship, or research; and

20 (2) The library or archives displays prominently, at the place
21 where orders are accepted, and includes on its order form, a warn-
22 ing of copyright in accordance with requirements that the Register
23 of Copyrights shall prescribe by regulation.

24 (f) Nothing in this section—

25 (1) shall be construed to impose liability for copyright in-
26 fringement upon a library or archives or its employees for the un-
27 supervised use of reproducing equipment located on its premises,
28 provided that such equipment displays a notice that the making
29 of a copy may be subject to the copyright law;

30 (2) excuses a person who uses such reproducing equipment or
31 who requests a copy under subsection (d) from liability for copy-
32 right infringement for any such act, or for any later use of such
33 copy, if it exceeds fair use as provided by section 107;

34 (3) in any way affects the right of fair use as provided by sec-
35 tion 107, or any contractual obligations assumed at any time by
36 the library or archives when it obtained a copy or phonorecord of
37 a work in its collections;

38 (4) shall be construed to limit the reproduction and distribu-
39 tion of a limited number of copies and excerpts by a library or

1 archives of an audiovisual news program subject to clauses (1),
2 (2), and (3) of subsection (a).

3 (g) The rights of reproduction and distribution under this section
4 extend to the isolated and unrelated reproduction or distribution of a
5 single copy or phonorecord of the same material on separate occasions,
6 but do not extend to cases where the library or archives, or its
7 employee:

8 (1) is aware or has substantial reason to believe that it is
9 engaging in the related or concerted reproduction or distribution
10 of multiple copies or phonorecords of the same material, whether
11 made on one occasion or over a period of time, and whether
12 intended for aggregate use by one or more individuals or for sepa-
13 rate use by the individual members of a group; or

14 (2) engages in the systematic reproduction or distribution of
15 single or multiple copies or phonorecords of material described
16 in subsection (d).

17 (h) The rights of reproduction and distribution under this section
18 do not apply to a musical work, a pictorial, graphic or sculptural work,
19 or a motion picture or other audiovisual work other than an audio-
20 visual work dealing with news, except that no such limitation shall
21 apply with respect to rights granted by subsections (b) and (c).

22 **§ 109. Limitations on exclusive rights: Effect of transfer of par-**
23 **ticular copy or phonorecord**

24 (a) Notwithstanding the provisions of section 106(3), the owner of
25 a particular copy or phonorecord lawfully made under this title, or any
26 person authorized by him, is entitled, without the authority of the
27 copyright owner, to sell or otherwise dispose of the possession of that
28 copy or phonorecord.

29 (b) Notwithstanding the provisions of section 106(5), the owner
30 of a particular copy lawfully made under this title, or any person
31 authorized by him, is entitled, without the authority of the copyright
32 owner, to display that copy publicly, either directly or by the projec-
33 tion of no more than one image at a time, to viewers present at the
34 place where the copy is located.

35 (c) The privileges prescribed by subsections (a) and (b) do not,
36 unless authorized by the copyright owner, extend to any person who
37 has acquired possession of the copy or phonorecord from the copy-
38 right owner, by rental, lease, loan, or otherwise, without acquiring
39 ownership of it.

§ 110. Limitations on exclusive rights: Exemption of certain performances and displays

Notwithstanding the provisions of section 106, the following are not infringements of copyright:

(1) performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made under this title, and that the person responsible for the performance knew or had reason to believe was not lawfully made;

(2) performance of a nondramatic literary or musical work or display of a work, by or in the course of a transmission, if:

(A) the performance or display is a regular part of the systematic instructional activities of a governmental body or a nonprofit educational institution; and

(B) the performance or display is directly related and of material assistance to the teaching content of the transmission; and

(C) the transmission is made primarily for:

(i) reception in classrooms or similar places normally devoted to instruction, or

(ii) reception by persons to whom the transmission is directed because their disabilities or other special circumstances prevent their attendance in classrooms or similar places normally devoted to instruction, or

(iii) reception by officers or employees of governmental bodies as a part of their official duties or employment;

(3) performance of a nondramatic literary or musical work or of a dramatico-musical work of a religious nature, or display of a work, in the course of services at a place of worship or other religious assembly;

(4) performance of a nondramatic literary or musical work otherwise than in a transmission to the public without any purpose of direct or indirect commercial advantage and without payment of any fee or other compensation for the performance to any of its performers, promoters, or organizers, if:

(A) there is no direct or indirect admission charge, or

(B) the proceeds, after deducting the reasonable costs of producing the performance, are used exclusively for educational, religious, or charitable purposes and not for private financial gain, except where the copyright owner has served notice of his objections to the performance under the following conditions:

(i) The notice shall be in writing and signed by the copyright owner or his duly authorized agent; and

(ii) The notice shall be served on the person responsible for the performance at least seven days before the date of the performance, and shall state the reasons for his objections; and

(iii) The notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation;

(5) communication of a transmission embodying a performance or display of a work by the public reception of the transmission on a single receiving apparatus of a kind commonly used in private homes, unless:

(A) a direct charge is made to see or hear the transmission; or

(B) the transmission thus received is further transmitted to the public;

(6) performance of a nondramatic musical work in the course of an annual agricultural or horticultural fair or exhibition conducted by a governmental body or a nonprofit agricultural or horticultural organization;

(7) performance of a nondramatic musical work by a vending establishment open to the public at large without any direct or indirect admission charge, where the sole purpose of the performance is to promote the retail sale of copies or phonorecords of the work and the performance is not transmitted beyond the place where the establishment is located.

§ 111. Limitations on exclusive rights: Secondary transmissions

(a) **CERTAIN SECONDARY TRANSMISSIONS EXEMPTED.**—The secondary transmission of a primary transmission embodying a performance or display of a work is not an infringement of copyright if:

(1) the secondary transmission is not made by a cable system, and consists entirely of the relaying, by the management of a hotel, apartment house, or similar establishment, of signals trans-

mitted by a broadcast station licensed by the Federal Communications Commission, within the local service area of such station, to the private lodgings of guests or residents of such establishment, and no direct charge is made to see or hear the secondary transmission; or

(2) the secondary transmission is made solely for the purpose and under the conditions specified by clause (2) of section 110; or

(3) the secondary transmission is made by a common, contract, or special carrier who has no direct or indirect control over the content or selection of the primary transmission or over the particular recipients of the secondary transmission, and whose activities with respect to the secondary transmission consist solely of providing wires, cables, or other communications channels for the use of others: *Provided*, That the provisions of this clause extend only to the activities of said carrier with respect to secondary transmissions and do not exempt from liability the activities of others with respect to their own primary or secondary transmission; or

(4) the secondary transmission is not made by a cable system but is made by a governmental body, or other nonprofit organization, without any purpose of direct or indirect commercial advantage, and without charge to the recipients of the secondary transmission other than assessments necessary to defray the actual and reasonable costs of maintaining and operating the secondary transmission service.

(b) SECONDARY TRANSMISSION OF PRIMARY TRANSMISSION TO CONTROLLED GROUP.—Notwithstanding the provisions of subsections (a) and (c), the secondary transmission to the public of a primary transmission embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506, if the primary transmission is not made for reception by the public at large but is controlled and limited to reception by particular members of the public.

(c) SECONDARY TRANSMISSIONS BY CABLE SYSTEMS.—

(1) Subject to the provisions of clause (2) of this subsection, secondary transmissions to the public by a cable system of a primary transmission made by a broadcast station licensed by the Federal Communications Commission and embodying a performance or display of a work shall be subject to compulsory licensing upon compliance with the requirements of subsection (d) in the following cases:

1 (A) Where the signals comprising the primary transmission
2 are exclusively aural and the secondary transmission is permis-
3 sible under the rules, regulations or authorizations of the Federal
4 Communications Commission; or

5 (B) Where the community of the cable system is in whole or
6 in part within the local service area of the primary transmitter;
7 or

8 (C) Where the carriage of the signals comprising the second-
9 ary transmission is permissible under the rules, regulations or
10 authorizations of the Federal Communications Commission.

11 (2) Notwithstanding the provisions of clause (1) of this subsection,
12 the secondary transmission to the public by a cable system of a pri-
13 mary transmission made by a broadcast station licensed by the Fed-
14 eral Communications Commission and embodying a performance or
15 display of a work is actionable as an act of infringement under section
16 501, and is fully subject to the remedies provided by sections 502
17 through 506, in the following cases:

18 (A) Where the carriage of the signals comprising the second-
19 ary transmission is not permissible under the rules, regulations
20 or authorizations of the Federal Communications Commission; or

21 (B) Where the cable system, at least one month before the date
22 of the secondary transmission, has not recorded the notice speci-
23 fied by subsection (d).

24 (d) **COMPULSORY LICENSE FOR SECONDARY TRANSMISSIONS BY CABLE**
25 **SYSTEMS.—**

26 (1) For any secondary transmission to be subject to compulsory
27 licensing under subsection (c), the cable system shall at least one month
28 before the date of the secondary transmission or within 30 days after
29 the enactment of this Act, whichever date is later, record in the Copy-
30 right Office, a notice including a statement of the identity and address
31 of the person who owns or operates the secondary transmission service
32 or has power to exercise primary control over it together with the
33 name and location of the primary transmitter, or primary transmit-
34 ters and thereafter, from time to time, such further information as the
35 Register of Copyrights shall prescribe by regulation to carry out the
36 purposes of this clause.

37 (2) A cable system whose secondary transmissions have been subject
38 to compulsory licensing under subsection (c) shall, during the months
39 of January, April, July, and October, deposit with the Register of

1 Copyrights, in accordance with requirements that the Register shall
2 prescribe by regulation—

3 (A) A statement of account, covering the three months next
4 preceding, specifying the number of channels on which the cable
5 system made secondary transmissions to its subscribers, the names
6 and locations of all primary transmitters whose transmissions
7 were further transmitted by the cable system, the total number
8 of subscribers to the cable system, and the gross amounts paid to
9 the cable system irrespective of source and separate statements of
10 the gross revenues paid to the cable system for advertising, leased
11 channels, and cable-casting for which a per-program or per-
12 channel charge is made and by subscribers for the basic service of
13 providing secondary transmissions of primary broadcast trans-
14 mitters; and

15 (B) A total royalty fee for the period covered by the state-
16 ment, computed on the basis of specified percentages of the gross
17 receipts from subscribers to the cable service during said period
18 for the basic service of providing secondary transmissions of
19 primary broadcast transmitters, as follows:

- 20 (i) $\frac{1}{2}$ percent of any gross receipts up to \$40,000;
- 21 (ii) 1 percent of any gross receipts totalling more than
22 \$40,000 but not more than \$80,000;
- 23 (iii) $1\frac{1}{2}$ percent of any gross receipts totalling more than
24 \$80,000, but not more than \$120,000;
- 25 (iv) 2 percent of any gross receipts totalling more than
26 \$120,000, but not more than \$160,000; and
- 27 (v) $2\frac{1}{2}$ percent of any gross receipts totalling more than
28 \$160,000.

29 (3) The royalty fees thus deposited shall be distributed in accord-
30 ance with the following procedures:

31 (A) During the month of July in each year, every person claiming
32 to be entitled to compulsory license fees for secondary transmissions
33 made during the preceding twelve-month period shall file a claim
34 with the Register of Copyrights, in accordance with requirements that
35 the Register shall prescribe by regulation. Notwithstanding any pro-
36 visions of the antitrust laws (as designated in section 1 of the Act of
37 October 15, 1914, 38 Stat. 730, Title 15 U.S.C. section 12, and any
38 amendments of such laws), for purposes of this clause any claimants
39 may agree among themselves as to the proportionate division of com-
40 pulsory licensing fees among them, may lump their claims together

1 and file them jointly or as a single claim, or may designate a common
2 agent to receive payment on their behalf.

3 (B) After the first day of August of each year, the Register of
4 Copyrights shall determine whether there exists a controversy con-
5 cerning the statement of account or the distribution of royalty fees. If
6 he determines that no such controversy exists, he shall, after deduct-
7 ing his reasonable administrative costs under this section, distribute
8 such fees to the copyright owners entitled, or to their designated
9 agents. If he finds the existence of a controversy he shall certify to
10 that fact and proceed to constitute a panel of the Copyright Royalty
11 Tribunal in accordance with section 803. In such cases the reasonable
12 administrative costs of the Register under this section shall be de-
13 ducted prior to distribution of the royalty fee by the tribunal.

14 (C) During the pendency of any proceeding under this subsection,
15 the Register of Copyrights or the Copyright Royalty Tribunal shall
16 withhold from distribution an amount sufficient to satisfy all claims
17 with respect to which a controversy exists, but shall have discretion
18 to proceed to distribute any amounts that are not in controversy.

19 (c) DEFINITIONS.—

20 As used in this section, the following terms and their variant forms
21 mean the following:

22 A "primary transmission" is a transmission made to the public
23 by the transmitting facility whose signals are being received and
24 further transmitted by the secondary transmission service, regard-
25 less of where or when the performance or display was first
26 transmitted.

27 A "secondary transmission" is the further transmitting of a
28 primary transmission simultaneously with the primary trans-
29 mission or nonsimultaneously with the primary transmission if by
30 a "cable system" not located in whole or in part within the bound-
31 ary of the forty-eight contiguous States, Hawaii, or Puerto Rico:
32 *Provided, however,* That a nonsimultaneous further transmission
33 by a cable system located in a television market in Hawaii of a
34 primary transmission shall be deemed to be a secondary trans-
35 mission if such further transmission is necessary to enable the
36 cable system to carry the full complement of signals allowed it
37 under the rules and regulations of the Federal Communications
38 Commission.

1 A "cable system" is a facility, located in any State, Territory,
 2 Trust Territory or Possession that in whole or in part receives
 3 signals transmitted or programs broadcast by one or more tele-
 4 vision broadcast stations licensed by the Federal Communications
 5 Commission and makes secondary transmissions of such signals
 6 or programs by wires, cables, or other communications channels
 7 to subscribing members of the public who pay for such service.
 8 For purposes of determining the royalty fee under subsection
 9 (d)(2)(B), two or more cable systems in contiguous communi-
 10 ties under common ownership or control or operating from one
 11 headend shall be considered as one system.

12 The "local service area of a primary transmitter" comprises
 13 the area in which a television broadcast station is entitled to
 14 insist upon its signal being retransmitted by a cable system
 15 pursuant to the rules and regulations of the Federal Communica-
 16 tions Commission.

17 **§ 112. Limitations on exclusive rights: Ephemeral recordings**

18 (a) Notwithstanding the provisions of section 106, and except in the
 19 case of a motion picture or other audiovisual work, it is not an
 20 infringement of copyright for a transmitting organization entitled to
 21 transmit to the public a performance or display of a work, under a
 22 license or transfer of the copyright or under the limitations on exclu-
 23 sive rights in sound recordings specified by section 114(a), to make
 24 no more than one copy or phonorecord of a particular transmission
 25 program embodying the performance or display, if—

26 (1) the copy or phonorecord is retained and used solely by the
 27 transmitting organization that made it, and no further copies or
 28 phonorecords are reproduced from it; and

29 (2) the copy or phonorecord is used solely for the transmitting
 30 organization's own transmissions within its local service area, or
 31 for purposes of archival preservation or security; and

32 (3) unless preserved exclusively for archival purposes, the copy
 33 or phonorecord is destroyed within six months from the date the
 34 transmission program was first transmitted to the public.

35 (b) Notwithstanding the provisions of section 106, it is not an in-
 36 fringement of copyright for a governmental body or other nonprofit
 37 organization entitled to transmit a performance or display of a work,
 38 under section 110(2) or under the limitations on exclusive rights in
 39 sound recordings specified by section 114(a), to make no more than

1 thirty copies or phonorecords of a particular transmission program
2 embodying the performance or display, if

3 (1) no further copies or phonorecords are reproduced from the
4 copies or phonorecords made under this clause; and

5 (2) except for one copy or phonorecord that may be preserved
6 exclusively for archival purposes, the copies or phonorecords are
7 destroyed within seven years from the date the transmission pro-
8 gram was first transmitted to the public.

9 (c) Notwithstanding the provisions of section 106, it is not an in-
10 fringement of copyright for a governmental body or other nonprofit
11 organization to make for distribution no more than one copy or phono-
12 record for each transmitting organization specified in clause (2) of this
13 subsection of a particular transmission program embodying a perform-
14 ance of a nondramatic musical work of a religious nature, or of a sound
15 recording of such a musical work, if—

16 (1) there is no direct or indirect charge for making or dis-
17 tributing any such copies or phonorecords; and

18 (2) none of such copies or phonorecords is used for any per-
19 formance other than a single transmission to the public by a trans-
20 mitting organization entitled to transmit to the public a perform-
21 ance of the work under a license or transfer of the copyright; and

22 (3) except for one copy or phonorecord that may be preserved
23 exclusively for archival purposes, the copies or phonorecords are
24 all destroyed within one year from the date the transmission pro-
25 gram was first transmitted to the public.

26 (d) The transmission program embodied in a copy or phonorecord
27 made under this section is not subject to protection as a derivative
28 work under this title except with the express consent of the owners
29 of copyright in the pre-existing works employed in the program.

30 **§ 113. Scope of exclusive rights in pictorial, graphic, and sculp-**
31 **tural works**

32 (a) Subject to the provisions of clauses (1) and (2) of this subsec-
33 tion, the exclusive right to reproduce a copyrighted pictorial, graphic,
34 or sculptural work in copies under section 106 includes the right to
35 reproduce the work in or on any kind of article, whether useful or
36 otherwise.

37 (1) This title does not afford, to the owner of copyright in a
38 work that portrays a useful article as such, any greater or lesser
39 rights with respect to the making, distribution, or display of the
40 useful article so portrayed than those afforded to such works

1 under the law, whether title 17 of the common law or statutes of
 2 a State, in effect on December 31, 1974, as held applicable and
 3 construed by a court in an action brought under this title.

4 (2) In the case of a work lawfully reproduced in useful articles
 5 that have been offered for sale or other distribution to the public,
 6 copyright does not include any right to prevent the making, dis-
 7 tribution, or display of pictures or photographs of such articles
 8 in connection with advertisements or commentaries related to the
 9 distribution or display of such articles, or in connection with news
 10 reports.

11 (b) When a pictorial, graphic, or sculptural work in which copy-
 12 right subsists under this title is utilized in an original ornamental
 13 design of a useful article, by the copyright proprietor or under an
 14 express license from him, the design shall be eligible for protection
 15 under the provisions of title III of this Act.

16 (c) Protection under this title of a work in which copyright subsists
 17 shall terminate with respect to its utilization in useful articles when-
 18 ever the copyright proprietor has obtained registration of an orna-
 19 mental design of a useful article embodying said work under the pro-
 20 visions of title III of this Act. Unless and until the copyright pro-
 21 prietor has obtained such registration, the copyright pictorial, graphic,
 22 or sculptural work shall continue in all respects to be covered by and
 23 subject to the protection afforded by the copyright subsisting under
 24 this title. Nothing in this section shall be deemed to create any addi-
 25 tional rights or protection under this title.

26 (d) Nothing in this section shall affect any right or remedy held
 27 by any person under this title in a work in which copyright was sub-
 28 sisting on the effective date of title III of this Act, or with respect to
 29 any utilization of a copyrighted work other than in the design of a
 30 useful article.

31 **§ 114. Scope of exclusive rights in sound recordings**

32 (a) The exclusive rights of the owner of copyright in a sound record-
 33 ing are limited to the rights specified by clauses (1) and (3) of sec-
 34 tion 106, and do not include any right of performance under section
 35 106(4).

36 (b) The exclusive right of the owner of copyright in a sound record-
 37 ing to reproduce it under section 106(1) is limited to the right to
 38 duplicate the sound recording in the form of phonorecords that directly
 39 or indirectly recapture the actual sounds fixed in the recording. This
 40 right does not extend to the making or duplication of another sound

1 recording that is an independent fixation of other sounds, even though
2 such sounds imitate or simulate those in the copyrighted sound
3 recording.

4 (c) This section does not limit or impair the exclusive right to per-
5 form publicly, by means of a phonorecord, any of the works specified
6 by section 106(4).

7 **§ 115. Scope of exclusive rights in nondramatic musical works:**
8 **Compulsory license for making and distributing phono-**
9 **records**

10 In the case of nondramatic musical works, the exclusive rights pro-
11 vided by clauses (1) and (3) of section 106, to make and to distribute
12 phonorecords of such works, are subject to compulsory licensing under
13 the conditions specified by this section.

14 (a) **AVAILABILITY AND SCOPE OF COMPULSORY LICENSE.—**

15 (1) When phonorecords of a nondramatic musical work have
16 been distributed to the public under the authority of the copyright
17 owner, any other person may, by complying with the provisions
18 of this section, obtain a compulsory license to make and distribute
19 phonorecords of the work. A person may obtain a compulsory
20 license only if his primary purpose in making phonorecords is to
21 distribute them to the public for private use. A person may not
22 obtain a compulsory license for use of the work in the duplication
23 of a sound recording made by another.

24 (2) A compulsory license includes the privilege of making a
25 musical arrangement of the work to the extent necessary to con-
26 form it to the style or manner of interpretation of the perform-
27 ance involved, but the arrangement shall not change the basic
28 melody or fundamental character of the work, and shall not be
29 subject to protection as a derivative work under this title, except
30 with the express consent of the copyright owner.

31 (b) **NOTICE OF INTENTION TO OBTAIN COMPULSORY LICENSE: DESIG-**
32 **NATION OF OWNER OF PERFORMANCE RIGHT.—**

33 (1) Any person who wishes to obtain a compulsory license
34 under this section shall, before or within thirty days after making,
35 and before distributing any phonorecords of the work, serve notice
36 of his intention to do so on the copyright owner. If the registra-
37 tion or other public records of the Copyright Office do not identify
38 the copyright owner and include an address at which notice can
39 be served on him, it shall be sufficient to file the notice of intention
40 in the Copyright Office. The notice shall comply, in form, con-

1 tent, and manner of service, with requirements that the Register
2 of Copyrights shall prescribe by regulation.

3 (2) If the copyright owner so requests in writing not later than
4 ten days after service or filing of the notice required by clause (1),
5 the person exercising the compulsory license shall designate, on
6 a label or container accompanying each phonorecord of the work
7 distributed by him, and in the form and manner that the Register
8 of Copyrights shall prescribe by regulation, the name of the
9 copyright owner or his agent to whom royalties for public per-
10 formance of the work are to be paid.

11 (3) Failure to serve or file the notice required by clause (1), or
12 to designate the name of the owner or agent as required by clause
13 (2), forecloses the possibility of a compulsory license and, in the
14 absence of a negotiated license, renders the making and distribu-
15 tion of phonorecords actionable as acts of infringement under
16 section 501 and fully subject to the remedies provided by sections
17 502 through 506.

18 (c) **ROYALTY PAYABLE UNDER COMPULSORY LICENSE.—**

19 (1) To be entitled to receive royalties under a compulsory
20 license, the copyright owner must be identified in the registration
21 or other public records of the Copyright Office. The owner is
22 entitled to royalties for phonorecords manufactured and distrib-
23 uted after he is so identified but he is not entitled to recover for
24 any phonorecords previously manufactured and distributed.

25 (2) Except as provided by clause (1), the royalty under a
26 compulsory license shall be payable for every phonorecord manu-
27 factured and distributed in accordance with the license. With
28 respect to each work embodied in the phonorecord, the royalty
29 shall be either three cents, or three quarter cent per minute of
30 playing time or fraction thereof, whichever amount is larger.

31 (3) Royalty payments shall be made on or before the twentieth
32 day of each month and shall include all royalties for the month
33 next preceding. Each monthly payment shall be accompanied
34 by a detailed statement of account, which shall be certified by a
35 Certified Public Accountant and comply in form, content, and
36 manner of certification with requirements that the Register of
37 Copyrights shall prescribe by regulation.

38 (4) If the copyright owner does not receive the monthly pay-
39 ment and statement of account when due, he may give written
40 notice to the licensee that, unless the default is remedied within

thirty days from the date of the notice, the compulsory license will be automatically terminated. Such termination renders the making and distribution of all phonorecords, for which the royalty had not been paid, actionable as acts of infringement under section 501 and fully subject to the remedies provided by sections 502 through 506.

§ 116. Scope of exclusive rights in nondramatic musical works and sound recordings: Public performances by means of coin-operated phonorecord players

(a) **LIMITATION ON EXCLUSIVE RIGHT.**—In the case of a nondramatic musical work embodied in a phonorecord, the exclusive right under clause (4) of section 106 to perform the work publicly by means of a coin-operated phonorecord player is limited as follows:

(1) The proprietor of the establishment in which the public performance takes place is not liable for infringement with respect to such public performance unless:

- (A) he is the operator of the phonorecord player; or
- (B) he refuses or fails, within one month after receipt by registered or certified mail of a request, at a time during which the certificate is required by subclause (1) (C) of subsection (b) is not affixed to the phonorecord player, by the copyright owner, to make full disclosure, by registered or certified mail, of the identity of the operator of the phonorecord player.

(2) The operator of the coin-operated phonorecord player may obtain a compulsory license to perform the work publicly on that phonorecord player by filing the application, affixing the certificate, and paying the royalties provided by subsection (b).

(b) **RECORDATION OF COIN-OPERATED PHONORECORD PLAYER, AFFIXATION OF CERTIFICATE, AND ROYALTY PAYABLE UNDER COMPULSORY LICENSE.**—

(1) Any operator who wishes to obtain a compulsory license for the public performance of works on a coin-operated phonorecord player shall fulfill the following requirements:

- (A) Before or within one month after such performances are made available on a particular phonorecord player, and during the month of January in each succeeding year that such performances are made available in that particular phonorecord player, he shall file in the Copyright Office, in accordance with requirements that the Register of Copyrights

1 shall prescribe by regulation, an application containing the
 2 name and address of the operator of the phonorecord player
 3 and the manufacturer and serial number or other explicit
 4 identification of the phonorecord player, and in addition to
 5 the fee prescribed by clause (9) of section 708(a), he shall
 6 deposit with the Register of Copyrights a royalty fee for
 7 the current calendar year of \$8 for that particular phono-
 8 record player. If such performances are made available on a
 9 particular phonorecord player for the first time after July 1
 10 of any year, the royalty fee to be deposited for the remainder
 11 of that year shall be \$4.00.

12 (B) Within twenty days of receipt of an application and a
 13 royalty fee pursuant to subclause (A), the Register of Copy-
 14 rights shall issue to the applicant a certificate for the phono-
 15 record player.

16 (C) On or before March 1 of the year in which the certifi-
 17 cate prescribed by subclause (B) of this clause is issued, or
 18 within ten days after the date of issue of the certificate, the
 19 operator shall affix to the particular phonorecord player, in a
 20 position where it can be readily examined by the public, the
 21 certificate, issued by the Register of Copyrights under sub-
 22 clause (B), of the latest application made by him under sub-
 23 clause (A) of this clause with respect to that phonorecord
 24 player.

25 (2) Failure to file the application, to affix the certificate or to
 26 pay the royalty required by clause (1) of this subsection renders
 27 the public performance actionable as an act of infringement under
 28 section 501 and fully subject to the remedies provided by section
 29 502 through 506.

30 (c) DISTRIBUTION OF ROYALTIES.—

31 (1) During the month of January in each year, every person
 32 claiming to be entitled to compulsory license fees under this section
 33 for performances during the preceding twelve-month period shall
 34 file a claim with the Register of Copyrights, in accordance with
 35 requirements that the Register shall prescribe by regulation.
 36 Such claim shall include an agreement to accept as final, except as
 37 provided in section 809 of this title, the determination of the Copy-
 38 right Royalty Tribunal in any controversy concerning the distri-
 39 bution of royalty fees deposited under subclause (a) of subsec-
 40 tion (b)(1) of this section to which the claimant is a party. Not-

1 withstanding any provisions of the antitrust laws (the Act of
2 October 15, 1914, 38 Stat. 730, and any amendments of any such
3 laws). for purposes of this subsection any claimants may agree
4 among themselves as to the proportionate division of compulsory
5 licensing fees among them. may lump their claims together and
6 file them jointly or as a single claim. or may designate a common
7 agent to receive payment on their behalf.

8 (2) After the first day of October of each year, the Register of
9 Copyrights shall determine whether there exists a controversy
10 concerning the distribution of royalty fees deposited under sub-
11 clause (A) of subsection (b)(1). If he determines that no such
12 controversy exists. he shall. after deducting his reasonable ad-
13 ministrative costs under this section, distribute such fees to the
14 copyright owners and performers entitled, or to their designated
15 agents. If he finds that such a controversy exists he shall certify
16 to that fact and proceed to constitute a panel of the Copyright
17 Royalty Tribunal in accordance with section 803. In such cases the
18 reasonable administrative costs of the Register under this section
19 shall be deducted prior to distribution of the royalty fee by the
20 tribunal.

21 (3) The fees to be distributed shall be divided as follows:

22 (A) To every copyright owner not affiliated with a perform-
23 ing rights society the pro rata share of the fees to be dis-
24 tributed to which such copyright owner proves his entitle-
25 ment; and

26 (B) To the performing rights societies the remainder of
27 the fees to be distributed in such pro rata shares as they shall
28 by agreement stipulate among themselves, or, if they fail to
29 agree, the pro rata share to which such performing rights
30 societies prove their entitlement.

31 (C) During the pendency of any proceeding under this
32 section. the Register of Copyrights or the Copyright Royalty
33 Tribunal shall withhold from distribution an amount suffi-
34 cient to satisfy all claims with respect to which a controversy
35 exists, but shall have discretion to proceed to distribute any
36 amounts that are not in controversy.

37 (4) The Register of Copyrights shall promulgate regulations
38 under which persons who can reasonably be expected to have
39 claims may, during the year in which performances take place,
40 without expense to or harassment of operators or proprietors of

1 establishments in which phonorecord players are located, have
 2 such access to such establishments and to the phonorecord players
 3 located therein and such opportunity to obtain information with
 4 respect thereto as may be reasonably necessary to determine, by
 5 sampling procedures or otherwise, the proportion of contribution
 6 of the musical works of each such person to the earnings of the
 7 phonorecord players for which fees shall have been deposited.
 8 Any person who alleges that he has been denied the access per-
 9 mitted under the regulations prescribed by the Register of Copy-
 10 rights may bring on an action in the United States District Court
 11 for the District of Columbia for the cancellation of the compul-
 12 sory license of the phonorecord player to which such access has
 13 been denied, and the court shall have the power to declare the
 14 compulsory license thereof invalid from the date of issue thereof.

15 (d) CRIMINAL PENALTIES.—Any person who knowingly makes a
 16 false representation of a material fact in an application filed under
 17 clause (1) (A) of subsection (b), or who knowingly alters a certificate
 18 issued under clause (1) (B) of subsection (b) or knowingly affixes
 19 such a certificate to a phonorecord player other than the one it covers,
 20 shall be fined not more than \$2,500.

21 (e) DEFINITIONS.—As used in this section, the following terms and
 22 their variant forms mean the following:

23 (1) A "coin-operated phonorecord player" is a machine or
 24 device that:

25 (A) is employed solely for the performance of non-
 26 dramatic musical works by means of phonorecords upon being
 27 activated by insertion of a coin;

28 (B) is located in an establishment making no direct or
 29 indirect charge for admission;

30 (C) is accompanied by a list of the titles of all the musical
 31 works available for performance on it, which list is affixed to
 32 the phonorecord player or posted in the establishment in a
 33 prominent position where it can be readily examined by the
 34 public; and

35 (D) affords a choice of works available for performance
 36 and permits the choice to be made by the patrons of the
 37 establishment in which it is located.

38 (2) An "operator" is any person who, alone or jointly with
 39 others:

40 (A) owns a coin-operated phonorecord player; or

1 (B) has the power to make a coin-operated phonorecord
 2 player available for placement in an establishment for pur-
 3 poses of public performance; or

4 (C) has the power to exercise primary control over the
 5 selection of the musical works made available for public
 6 performance in a coin-operated phonorecord player.

7 (3) A "performing rights society" is an association or corpora-
 8 tion that licenses the public performance of nondramatic musical
 9 works on behalf of the copyright owners, such as the American
 10 Society of Composers, Authors and Publishers, Broadcast Music,
 11 Inc., and SESAC, Inc.

12 **§ 117. Scope of exclusive rights: Use in conjunction with com-**
 13 **puters and similar information systems**

14 Notwithstanding the provisions of sections 106 through 116, this
 15 title does not afford to the owner of copyright in a work any greater
 16 or lesser rights with respect to the use of the work in conjunction with
 17 automatic systems capable of storing, processing, retrieving, or trans-
 18 ferring information, or in conjunction with any similar device, ma-
 19 chine, or process, than those afforded to works under the law, whether
 20 title 17 or the common law or statutes of a State, in effect on Decem-
 21 ber 31, 1974, as held applicable and construed by a court in an action
 22 brought under this title.

23 **Chapter 2.—COPYRIGHT OWNERSHIP AND TRANSFER**

Sec.

201. Ownership of copyright.

202. Ownership of copyright as distinct from ownership of material object.

203. Termination of transfers and licenses granted by the author.

204. Execution of transfers of copyright ownership.

205. Recordation of transfers and other documents.

24 **§ 201. Ownership of copyright**

25 (a) **INITIAL OWNERSHIP.**—Copyright in work protected under this
 26 title vests initially in the author or authors of the work. The authors
 27 of a joint work are co-owners of copyright in the work.

28 (b) **WORKS MADE FOR HIRE.**—In the case of a work made for hire,
 29 the employer or other persons for whom the work was prepared is
 30 considered the author for purposes of this title, and, unless the parties
 31 have expressly agreed otherwise in a written instrument signed by
 32 them, owns all of the rights comprised in the copyright.

33 (c) **CONTRIBUTIONS TO COLLECTIVE WORKS.**—Copyright in each sep-
 34 arate contribution to a collective work is distinct from copyright in
 35 the collective work as a whole, and vests initially in the author of the
 36 contribution. In the absence of an express transfer of the copyright

1 or of any rights under it, the owner of copyright in the collective
 2 work is presumed to have acquired only the privilege of reproducing
 3 and distributing the contribution as part of that particular collective
 4 work, any revision of that collective work, and any later collective
 5 work in the same series.

6 (d) TRANSFER OF OWNERSHIP.—

7 (1) The ownership of a copyright may be transferred in whole
 8 or in part by any means of conveyance or by operation of law, and
 9 may be bequeathed by will or pass as personal property by the
 10 applicable laws of interstate succession.

11 (2) Any of the exclusive rights comprised in a copyright,
 12 including any subdivision of any of the rights specified by section
 13 106, may be transferred as provided by clause (1) and owned sepa-
 14 rately. The owner of any particular exclusive right is entitled, to
 15 the extent of that right, to all of the protection and remedies
 16 accorded to the copyright owner by this title.

17 **§ 202. Ownership of copyright as distinct from ownership of**
 18 **material object**

19 Ownership of a copyright, or of any of the exclusive rights under
 20 a copyright, is distinct from ownership of any material object in
 21 which the work is embodied. Transfer of ownership of any material
 22 object, including the copy or phonorecord in which the work is first
 23 fixed, does not of itself convey any rights in the copyrighted work
 24 embodied in the object; nor, in the absence of an agreement, does
 25 transfer of ownership of a copyright or of any exclusive rights under
 26 a copyright convey property rights in any material object.

27 **§ 203. Termination of transfers and licenses granted by the author**

28 (a) CONDITIONS FOR TERMINATION.—In the case of any work other
 29 than a work made for hire, the exclusive or nonexclusive grant of a
 30 transfer or license of copyright or of any right under a copyright,
 31 executed by the author on or after January 1, 1975, otherwise than
 32 by will, is subject to termination under the following conditions:

33 (1) In the case of a grant executed by one author, termination
 34 of the grant may be effected by that author, or, if he is dead, by
 35 the person or persons who, under clause (2) of this subsection,
 36 own and are entitled to exercise a total of more than one half of
 37 that author's termination interest. In the case of a grant executed
 38 by two or more authors of a joint work, termination of the grant
 39 may be effected by a majority of the authors who executed it;
 40 if any of such authors is dead, his termination interest may be

1 exercised as a unit by the person or persons who, under clause (2)
2 of this subsection, own and are entitled to exercise a total of more
3 than one half of his interest.

4 (2) Where an author is dead, his or her termination interest is
5 owned, and may be exercised, by his widow (or her widower) and
6 children or grandchildren as follows:

7 (A) The widow (or widower) owns the author's entire ter-
8 mination interest unless there are any surviving children or
9 grandchildren of the author, in which case the widow (or
10 widower) owns one half of the author's interest;

11 (B) The author's surviving children, and the surviving
12 children of any dead child of the author, own the author's
13 entire termination interest unless there is a widow (or wid-
14 ower), in which case the ownership of one half of the author's
15 interest is divided among them;

16 (C) The rights of the author's children and grandchildren
17 are in all cases divided among them and exercised on a per
18 stirpes basis according to the number of his children repre-
19 sented; the share of the children of a dead child in a termina-
20 tion interest can be exercised only by the action of a majority
21 of them.

22 (3) Termination of the grant may be effected at any time during
23 a period of five years beginning at the end of thirty-five years from
24 the date of execution of the grant; or, if the grant covers the right
25 of publication of the work, the period begins at the end of thirty-
26 five years from the date of publication of the work under the grant
27 or at the end of forty years from the date of execution of the
28 grant, whichever term ends earlier.

29 (4) The termination shall be effected by serving an advance
30 notice in writing, signed by the number and proportion of owners
31 of termination interests required under clauses (1) and (2) of this
32 subsection, or by their duly authorized agents, upon the grantee
33 or his successor in title.

34 (A) The notice shall state the effective date of the termina-
35 tion, which shall fall within the five-year period specified by
36 clause (3) of this subsection, and the notice shall be served
37 not less than two or more than ten years before that date. A
38 copy of the notice shall be recorded in the Copyright Office
39 before the effective date of termination, as a condition to its
40 taking effect.

1 (B) The notice shall comply, in form, content, and man-
2 ner of service, with requirements that the Register of Copy-
3 rights shall prescribe by regulation.

4 (5) Termination of the grant may be effected notwithstand-
5 ing any agreement to the contrary, including an agreement to
6 make a will or to make any future grant.

7 (b) EFFECT OF TERMINATION.—Upon the effective date of termina-
8 tion, all rights under this title that were covered by the terminated
9 grant revert to the author, authors, and other persons owning termi-
10 nation interests under clauses (1) and (2) of subsection (a), includ-
11 ing those owners who did not join in signing the notice of termination
12 under clause (4) of subsection (a) but, with the following limitations:

13 (1) A derivative work prepared under authority of the grant
14 before its termination may continue to be utilized under the terms
15 of the grant after its termination, but this privilege does not ex-
16 tend to the preparation after the termination of other derivative
17 works based upon the copyrighted work covered by the terminated
18 grant.

19 (2) The future rights that will revert upon termination of the
20 grant become vested on the date the notice of termination has
21 been served as provided by clause (4) of subsection (a). The
22 rights vest in the author, authors, and other persons named in,
23 and in the proportionate shares provided by, clauses (1) and (2)
24 of subsection (a).

25 (3) Subject to the provisions of clause (4) of this subsection,
26 a further grant, or agreement to make a further grant, of any
27 right covered by a terminated grant is valid only if it is signed
28 by the same number and proportion of the owners, in whom the
29 right has vested under clause (2) of this subsection, as are re-
30 quired to terminate the grant under clauses (1) and (2) of sub-
31 section (a). Such further grant or agreement is effective with
32 respect to all of the persons in whom the right it covers has vested
33 under clause (2) of this subsection, including those who did not
34 join in signing it. If any person dies after rights under a ter-
35 minated grant have vested in him, his legal representatives,
36 legatees, or heirs at law represent him for purposes of this clause.

37 (4) A further grant, or agreement to make a further grant, of
38 any right covered by a terminated grant is valid only if it is made
39 after the effective date of the termination. As an exception, how-
40 ever, an agreement for such a further grant may be made between

1 the persons provided by clause (3) of this subsection and the
 2 original grantee or his successor in title, after the notice of termi-
 3 nation has been served as provided by clause (4) of subsection (a).

4 (5) Termination of a grant under this section affects only those
 5 rights covered by the grant that arise under this title, and in no
 6 way affects rights arising under any other Federal, State, or for-
 7 eign laws.

8 (6) Unless and until termination is effected under this section,
 9 the grant, if it does not provide otherwise, continues in effect for
 10 the term of copyright provided by this title.

11 **§ 204. Execution of transfers of copyright ownership**

12 (a) A transfer of copyright ownership, other than by operation of
 13 law, is not valid unless an instrument of conveyance, or a note or
 14 memorandum of the transfer, is in writing and signed by the owner
 15 of the rights conveyed or his duly authorized agent.

16 (b) A certificate of acknowledgement is not required for the valid-
 17 ity of a transfer, but is prima facie evidence of the execution of the
 18 transfer if:

19 (1) in the case of a transfer executed in the United States, the
 20 certificate is issued by a person authorized to administer oaths
 21 within the United States; or

22 (2) in the case of a transfer executed in a foreign country, the
 23 certificate is issued by a diplomatic or consular officer of the
 24 United States, or by a person authorized to administer oaths
 25 whose authority is proved by a certificate of such an officer.

26 **§ 205. Recordation of transfers and other documents**

27 (a) **CONDITIONS FOR RECORDATION.**—Any transfer of copyright own-
 28 ership or other document pertaining to a copyright may be recorded
 29 in the Copyright Office if the document filed for recordation bears the
 30 actual signature of the person who executed it, or if it is accompanied
 31 by a sworn or official certification that it is a true copy of the original
 32 signed, document.

33 (b) **CERTIFICATE OF RECORDATION.**—The Register of Copyrights
 34 shall, upon receipt of a document as provided by subsection (a) and
 35 of the fee provided by section 708, record the document and return it
 36 with a certificate of recordation.

37 (c) **RECORDATION AS CONSTRUCTIVE NOTICE.**—Recordation of a docu-
 38 ment in the Copyright Office gives all persons constructive notice of the
 39 facts stated in the recorded document, but only if:

(1) the document, or material attached to it, specifically identifies the work to which it pertains so that, after the document is indexed by the Register of Copyrights, it would be revealed by a reasonable search under the title or registration number of the work; and

(2) registration has been made for the work.

(d) RECORDATION AS PREREQUISITE TO INFRINGEMENT SUIT.—No person claiming by virtue of a transfer to the owner of copyright or of any exclusive right under a copyright is entitled to institute an infringement action under this title until the instrument of transfer under which he claims has been recorded in the Copyright Office, but suit may be instituted after such recordation on a cause of action that arose before recordation.

(e) PRIORITY BETWEEN CONFLICTING TRANSFERS.—As between two conflicting transfers, the one executed first prevails if it is recorded, in the manner required to give constructive notice under subsection (c) within one month after its execution in the United States or within two months after its execution abroad, or at any time before recordation in such manner of the later transfer. Otherwise the later transfer prevails if recorded first in such manner, and if taken in good faith, for valuable consideration or on the basis of a binding promise to pay royalties, and without notice of the earlier transfer.

(f) PRIORITY BETWEEN CONFLICTING TRANSFER OF OWNERSHIP AND NONEXCLUSIVE LICENSE.—A nonexclusive license, whether recorded or not, prevails over a conflicting transfer of copyright ownership if the license is evidenced by a written instrument signed by the owner of the rights licensed or his duly authorized agent, and if:

- (1) the license was taken before execution of the transfer; or
- (2) the license was taken in good faith before recordation of the transfer and without notice of it.

Chapter 3.—DURATION OF COPYRIGHT

Sec.

301. Pre-emption with respect to other laws.

302. Duration of copyright: Works created on or after January 1, 1975.

303. Duration of copyright: Works created but not published or copyrighted before January 1, 1975.

304. Duration of copyright: Subsisting copyrights.

305. Duration of copyright: Terminal date.

§ 301. Pre-emption with respect to other laws

(a) On and after January 1, 1975, all rights in the nature of copyright in works that come within the subject matter of copyright as specified by sections 102 and 103, whether created before or after that

1 date and whether published or unpublished, are governed exclusively
 2 by this title. Thereafter, no person is entitled to copyright, literary
 3 property rights, or any equivalent legal or equitable right in any such
 4 work under the common law or statutes of any State.

5 (b) Nothing in this title annuls or limits any rights or remedies
 6 under the common law or statutes of any State with respect to:

7 (1) unpublished material that does not come within the subject
 8 matter of copyright as specified by sections 102 and 103, including
 9 works of authorship not fixed in any tangible medium of ex-
 10 pression;

11 (2) any cause of action arising from undertakings commenced
 12 before January 1, 1975;

13 (3) activities violating rights that are not equivalent to any of
 14 the exclusive rights within the general scope of copyright as speci-
 15 fied by section 106, including breaches of contract, breaches of
 16 trust, invasion of privacy, defamation, and deceptive trade prac-
 17 tices such as passing off and false representation.

18 **§ 302. Duration of copyright: Works created on or after Janu-**
 19 **ary 1, 1975**

20 (a) **IN GENERAL.**—Copyright in a work created on or after January
 21 1, 1975, subsists from its creation and, except as provided by the
 22 following subsections, endures for a term consisting of the life of the
 23 author and fifty years after his death.

24 (b) **JOINT WORKS.**—In the case of a joint work prepared by two
 25 or more authors who did not work for hire, the copyright endures for
 26 a term consisting of the life of the last surviving author and fifty
 27 years after his death.

28 (c) **ANONYMOUS WORKS, PSEUDONYMOUS WORKS, AND WORK MADE**
 29 **FOR HIRE.**—In the case of an anonymous work, a pseudonymous work
 30 or a work made for hire, the copyright endures for a term of seventy-
 31 five years from the year of its first publication, or a term of one
 32 hundred years from the year of its creation, whichever expires first.
 33 If, before the end of such term, the identity of one or more of the
 34 authors of an anonymous or pseudonymous work is revealed in the
 35 records of a registration made for that work under subsection (a)
 36 or (d) of section 407, or in the records provided by this subsection,
 37 the copyright in the work endures for the term specified by subsections
 38 (a) or (b), based on the life of the author or authors whose identity
 39 has been revealed. Any person having an interest in the copyright in
 40 an anonymous or pseudonymous work may at any time record, in

1 records to be maintained by the Copyright Office for that purpose, a
 2 statement identifying one or more authors of the work; the statement
 3 shall also identify the person filing it, the nature of his interest, the
 4 source of his information, and the particular work affected, and shall
 5 comply in form and content with requirements that the Register of
 6 Copyrights shall prescribe by regulation.

7 (d) RECORDS RELATING TO DEATH OF AUTHORS.—Any person having
 8 an interest in a copyright may at any time record in the Copyright
 9 Office a statement of the date of death of the author of the copy-
 10 righted work, or a statement that the author is still living on a par-
 11 ticular date. The statement shall identify the person filing it, the
 12 nature of his interest, and the source of his information, and shall
 13 comply in form and content with requirements that the Register
 14 of Copyrights shall prescribe by regulation. The Register shall main-
 15 tain current records of information relating to the death of authors
 16 of copyrighted works, based on such recorded statements and, to the
 17 extent he considers practicable, on data contained in any of the records
 18 of the Copyright Office or in other reference sources.

19 (e) PRESUMPTION AS TO AUTHOR'S DEATH.—After a period of seventy-
 20 five years from the year of first publication of a work, or a period
 21 of one hundred years from the year of its creation, whichever expires
 22 first, any person who obtains from the Copyright Office a certified re-
 23 port that the records provided by subsection (d) disclose nothing to
 24 indicate that the author of the work is living, or died less than fifty
 25 years before, is entitled to the benefit of a presumption that the author
 26 has been dead for at least fifty years. Reliance in good faith upon this
 27 presumption shall be complete defense to any action for infringement
 28 under this title.

29 **§ 303. Duration of copyright: Works created but not published**
 30 **or copyrighted before January 1, 1975**

31 Copyright in a work created before January 1, 1975, but not thereto-
 32 fore in the public domain or copyrighted, subsists from January 1,
 33 1975, and endures for the term provided by section 302. In no case,
 34 however, shall the term of copyright in such a work expire before
 35 December 31, 1999; and, if the work is published on or before December
 36 31, 1999, the term of copyright shall not expire before December 31,
 37 2024.

38 **§ 304. Duration of copyright: Subsisting copyrights**

39 (a) COPYRIGHTS IN THEIR FIRST TERM ON JANUARY 1, 1975.—Any
 40 copyright, the first term of which is subsisting on January 1, 1975,

1 shall endure for twenty-eight years from the date it was originally
 2 secured: *Provided*, That in the case of any posthumous work or of any
 3 periodical, cyclopedic, or other composite work upon which the copy-
 4 right was originally secured by the proprietor thereof, or of any work
 5 copyrighted by a corporate body (otherwise than as assignee or li-
 6 censee of the individual author) or by an employer for whom such
 7 work is made for hire, the proprietor of such copyright shall be en-
 8 titled to a renewal and extension of the copyright in such work for the
 9 further term of forty-seven years when application for such renewal
 10 and extension shall have been made to the Copyright Office and duly
 11 registered therein within one year prior to the expiration of the origi-
 12 nal term of copyright: *And provided further*, That in the case of any
 13 other copyrighted work, including a contribution by an individual
 14 author to a periodical or to a cyclopedic or other composite work, the
 15 author of such work, if still living, or the widow, widower, or children
 16 of the author, if the author be not living, or if such author, widow,
 17 widower, or children be not living, then the author's executors, or in
 18 the absence of a will, his next of kin shall be entitled to a renewal and
 19 extension of the copyright in such work for a further term of forty-
 20 seven years when application for such renewal and extension shall
 21 have been made to the Copyright Office and duly registered therein
 22 within one year prior to the expiration of the original term of copy-
 23 right: *And provided further*, That in default of the registration of
 24 such application for renewal and extension, the copyright in any work
 25 shall terminate at the expiration of twenty-eight years from the date
 26 copyright was originally secured.

27 (b) COPYRIGHTS IN THEIR RENEWAL TERM OR REGISTERED FOR RE-
 28 NEWAL BEFORE JANUARY 1, 1975.—The duration of any copyright, the
 29 renewal term of which is subsisting at any time between December 31,
 30 1973, and December 31, 1974, inclusive, or for which renewal registra-
 31 tion is made between December 31, 1973, and December 31, 1974,
 32 inclusive, is extended to endure for a term of 75 years from the date
 33 copyright was originally secured.

34 (c) TERMINATION OF TRANSFERS AND LICENSES COVERING EXTENDED
 35 RENEWAL TERM.—In the case of any copyright subsisting in either
 36 its first or renewal term on January 1, 1975, other than a copyright
 37 in a work made for hire, the exclusive or nonexclusive grant of a trans-
 38 fer or license of the renewal copyright or of any right under it,
 39 executed before January 1, 1975, by any of the persons designated by

1 the second proviso of subsection (a) of this section, otherwise than by
2 will, is subject to termination under the following condition:

3 (1) In the case of a grant executed by a person or persons other
4 than the author, termination of the grant may be effected by the
5 surviving person or persons who executed it. In the case of a
6 grant executed by one or more of the authors of the work, termina-
7 tion of the grant may be effected, to the extent of a particular
8 author's share in the ownership of the renewal copyright, by the
9 author who executed it or, if such author is dead, by the person or
10 persons who, under clause (2) of this subsection, own and are
11 entitled to exercise a total of more than one half of that author's
12 termination interest.

13 (2) Where an author is dead, his or her termination interest is
14 owned, and may be exercised, by his widow (or her widower) and
15 children or grandchildren as follows:

16 (A) The widow (or widower) owns the author's entire
17 termination interest unless there are any surviving children
18 or grandchildren of the author, in which case the widow (or
19 widower) owns one half of the author's interest:

20 (B) The author's surviving children, and the surviving
21 children of any dead child of the author, own the author's
22 entire termination interest unless there is a widow (or wid-
23 over), in which case the ownership of one half of the author's
24 interest is divided among them;

25 (C) The rights of the author's children and grandchildren
26 are in all cases divided among them and exercised on a per
27 stirpes basis according to the number of his children repre-
28 sented; the share of the children of a dead child in a termina-
29 tion interest can be exercised only by the action of a major-
30 ity of them.

31 (3) Termination of the grant may be effected at any time dur-
32 ing a period of five years beginning at the end of fifty-six years
33 from the date copyright was originally secured, or beginning on
34 January 1, 1975, whichever is later.

35 (4) The termination shall be effected by serving an advance
36 notice in writing upon the grantee or his successor in title. In the
37 case of a grant executed by a person or persons other than the
38 author, the notice shall be signed by all of those entitled to termi-
39 nate the grant under clause (1) of this subsection, or by their duly
40 authorized agents. In the case of a grant executed by one or more

1 of the authors of the work, the notice as to any one author's share
 2 shall be signed by him or his duly authorized agent or, if he is
 3 dead, by the number and proportion of the owners of his termina-
 4 tion interest required under clauses (1) and (2) of this subsection,
 5 or by their duly authorized agents.

6 (A) The notice shall state the effective date of the termi-
 7 nation, which shall fall within the five-year period specified
 8 by clause (3) of this subsection, and the notice shall be served
 9 not less than two or more than ten years before that date. A
 10 copy of the notice shall be recorded in the Copyright Office
 11 before the effective date of termination, as a condition to its
 12 taking effect.

13 (B) The notice shall comply, in form, content, and manner
 14 of service, with requirements that the Register of Copyrights
 15 shall prescribe by regulation.

16 (5) Termination of the grant may be effected notwithstanding
 17 any agreement to the contrary, including an agreement to make
 18 a will or to make any future grant.

19 (6) In the case of a grant executed by a person or persons other
 20 than the author, all rights under this title that were covered by
 21 the terminated grant revert, upon the effective date of termination,
 22 to all of those entitled to terminate the grant under clause (1) of
 23 this subsection. In the case of a grant executed by one or more
 24 of the authors of the work, all of a particular author's rights
 25 under this title that were covered by the terminated grant revert,
 26 upon the effective date of termination, to that author or, if he is
 27 dead, to the persons owning his termination interest under clause
 28 (2) of this subsection, including those owners who did not join
 29 in signing the notice of termination under clause (4) of this sub-
 30 section. In all cases the reversion of rights is subject to the follow-
 31 ing limitations:

32 (A) A derivative work prepared under authority of the
 33 grant before its termination may continue to be utilized under
 34 the terms of the grant after its termination, but this privilege
 35 does not extend to the preparation after the termination of
 36 other derivative works based upon the copyrighted work cov-
 37 ered by the terminated grant.

38 (B) The future rights that will revert upon termination
 39 of the grant become vetoed on the date the notice of termi-

1 nation has been served as provided by clause (4) of this
2 subsection.

3 (C) Where an author's rights revert to two or more per-
4 sons under clause (2) of this subsection, they shall vest in
5 those persons in the proportionate shares provided by that
6 clause. In such a case, and subject to the provisions of sub-
7 clause (D) of this clause, a further grant, or agreement to
8 make a further grant, of a particular author's share with
9 respect to any right covered by a terminated grant is valid
10 only if it is signed by the same number and proportion of
11 the owners, in whom the right has vested under this clause,
12 as are required to terminate the grant under clause (2) of
13 this subsection. Such further grant or agreement is effective
14 with respect to all of the persons in whom the right it
15 covers has vested under this subclause, including those who
16 did not join in signing it. If any person dies after rights
17 under a terminated grant have vested in him, his legal repre-
18 sentatives, legatees, or heirs at law represent him for purposes
19 of this subclass.

20 (D) A further grant, or agreement to make a further
21 grant, of any right covered by a terminated grant is valid
22 only if it is made after the effective date of the termination.
23 As an exception, however, an agreement for such a further
24 grant may be made between the author or any of the per-
25 sons provided by the first sentence of clause (6) of this
26 subsection, or between the persons provided by subclause
27 (C) of this clause, and the original grantee or his successor
28 in title, after the notice of termination has been served as
29 provided by clause (4) of this subsection.

30 (E) Termination of a grant under this subsection affects
31 only those rights covered by the grant that arise under this
32 title, and in no way affects rights arising under any other
33 Federal, State, or foreign laws.

34 (F) Unless and until termination is effected under this
35 section, the grant, if it does not provide otherwise, continues
36 in effect for the remainder of the extended renewal term.

37 § 305. Duration of copyright: Terminal date

38 All terms of copyright provided by sections 302 through 304 run to
39 the end of the calendar year in which they would otherwise expire.

1 Chapter 4.—COPYRIGHT NOTICE, DEPOSIT, AND 2 REGISTRATION

Sec.

- 401. Notice of copyright: Visually perceptible copies.
- 402. Notice of copyright: Phonorecords of sound recordings.
- 403. Notice of copyright: Publications incorporating United States Government works.
- 404. Notice of copyright: Contributions to collective works.
- 405. Notice of copyright: Omission of notice.
- 406. Notice of copyright: Error in name or date.
- 407. Deposit of copies or phonorecords for Library of Congress.
- 408. Copyright registration in general.
- 409. Application for registration.
- 410. Registration of claim and issuance of certificate.
- 411. Registration as prerequisite to infringement suit.
- 412. Registration as prerequisite to certain remedies for infringement.

3 § 401. Notice of copyright: Visually perceptible copies

4 (a) GENERAL REQUIREMENT.—Whenever a work protected under
5 this title is published in the United States or elsewhere by authority
6 of the copyright owner, a notice of copyright as provided by this sec-
7 tion shall be placed on all publicly distributed copies from which the
8 work can be visually perceived, either directly or with the aid of a
9 machine or device.

10 (b) FORM OF NOTICE.—The notice appearing on the copies shall con-
11 sist of the following three elements:

12 (1) the symbol © (the letter C in a circle), the word "Copy-
13 right," or the abbreviation "Copr.";

14 (2) the year of first publication of the work: in the case of
15 compilations or derivative works incorporating previously pub-
16 lished material, the year date of first publication of the compila-
17 tion or derivative work is sufficient. The year date may be omitted
18 where a pictorial, graphic, or sculptural work, with accompanying
19 text matter, if any, is reproduced in or on greeting cards, post-
20 cards, stationery, jewelry, dolls, toys, or any useful articles;

21 (3) the name of the owner of copyright in the work, or an ab-
22 breviation by which the name can be recognized, or a generally
23 known alternative designation of the owner.

24 (c) POSITION OF NOTICE.—The notice shall be affixed to the copies in
25 such manner and location as to give reasonable notice of the claim
26 of copyright. The Register of Copyrights shall prescribe by regula-
27 tion, as examples, specific methods of affixation and positions of the
28 notice on various types of works that will satisfy this requirement, but
29 these specifications shall not be considered exhaustive.

30 § 402. Notice of copyright: Phonorecords of sound recordings

31 (a) GENERAL REQUIREMENT.—Whenever a sound recording pro-

1 ected under this title is published in the United States or elsewhere by
 2 authority of the copyright owner, a notice of copyright as provided
 3 by this section shall be placed on all publicly distributed phonorecords
 4 of the sound recording.

5 (b) **FORM OF NOTICE.**—The notice appearing on the phonorecords
 6 shall consist of the following three elements:

- 7 (1) the symbol © (the letter P in a circle) ;
- 8 (2) the year of first publication of the sound recording ;
- 9 (3) the name of the owner of copyrights in the sound record-
 10 ing, or an abbreviation by which the name can be recognized, or a
 11 generally known alternative designation of the owner; if the
 12 producer of the sound recording is named on the phonorecord
 13 labels or containers, and if no other name appears in conjunction
 14 with the notice, his name shall be considered a part of the notice.

15 (c) **POSITION OF NOTICE.**—The notice shall be placed on the surface
 16 of the phonorecord, or on the phonorecord label or container, in such
 17 manner and location as to give reasonable notice of the claim of copy-
 18 right.

19 **§ 403. Notice of copyright: Publications incorporating United**
 20 **State Government works**

21 Whenever a work is published in copies or phonorecords consisting
 22 preponderantly of one or more works of the United States Govern-
 23 ment, the notice of copyright provided by section 401 or 402 shall
 24 also include a statement identifying, either affirmatively or negatively,
 25 those portions of the copies or phonorecords embodying any work or
 26 works protected under this title.

27 **§ 404. Notice of copyright: Contributions to collective works**

28 (a) A separate contribution to a collective work may bear its own
 29 notice of copyright, as provided by section 401 through 403. How-
 30 ever, a single notice applicable to the collective work as a whole is
 31 sufficient to satisfy the requirements of sections 401 through 403 with
 32 respect to the separate contributions it contains (not including adver-
 33 tisements inserted on behalf of persons other than the owner of copy-
 34 right in the collective work), regardless of the ownership of copyright
 35 in the contributions and whether or not they have been previously
 36 published.

37 (b) Where the person named in a single notice applicable to a
 38 collective work as a whole is not the owner of copyright in a separate
 39 contribution that does not bear its own notice, the case is governed
 40 by the provisions of section 406(a).

1 § 405. Notice of copyright: Omission of notice

2 (a) EFFECT OF OMISSION ON COPYRIGHT.—The omission of the copy-
3 right notice described by sections 401 through 403 from copies or
4 phonorecords publicly distributed by authority of the copyright
5 owner does not invalidate the copyright in a work if:

6 (1) the notice has been omitted from no more than a relatively
7 small number of copies or phonorecords distributed to the public;
8 or

9 (2) registration for the work has been made before or is made
10 within five years after the publication without notice, and a
11 reasonable effort is made to add notice to all copies or phono-
12 records that are distributed to the public in the United States
13 after the omission has been discovered; or

14 (3) the notice has been omitted in violation of an express re-
15 quirement in writing that, as a condition of the copyright owner's
16 authorization of the public distribution of copies or phonorecords,
17 they bear the prescribed notice.

18 (b) EFFECT OF OMISSION ON INNOCENT INFRINGERS.—Any person
19 who innocently infringes a copyright, in reliance upon an authorized
20 copy or phonorecord from which the copyright notice has been
21 omitted, incurs no liability for actual or statutory damages under sec-
22 tion 504 for any infringing acts committed before receiving actual
23 notice that registration for the work has been made under section 408,
24 if he proves that he was misled by the omission of notice. In a suit
25 for infringement in such a case the court may allow or disallow re-
26 covery of any of the infringer's profits attributable to the infringe-
27 ment, and may enjoin the continuation of the infringing undertaking
28 or may require, as a condition for permitting the infringer to con-
29 tinue his undertaking, that he pay the copyright owner a reason-
30 able license fee in an amount and on terms fixed by the court.

31 (c) REMOVAL OF NOTICE.—Protection under this title is not affected
32 by the removal, destruction, or obliteration of the notice, without
33 the authorization of the copyright owner, from any publicly distrib-
34 uted copies of phonorecords.

35 § 406. Notice of copyright: Error in name or date

36 (a) ERROR IN NAME.—Where the person named in the copyright
37 notice on copies or phonorecords publicly distributed by authority of
38 the copyright owner is not the owner of copyright, the validity and
39 ownership of the copyright are not affected. In such a case, however,
40 any person who innocently begins an undertaking that infringes the

1 copyright has a complete defense to any action for such infringement
 2 if he proves that he was misled by the notice and began the undertak-
 3 ing in good faith under a purported transfer or license from the person
 4 named therein, unless before the undertaking was begun:

5 (1) registration for the work had been made in the name of
 6 the owner of copyright; or

7 (2) a document executed by the person named in the notice
 8 and showing the ownership of the copyright had been recorded.
 9 The person named in the notice is liable to account to the copyright
 10 owner for all receipts from purported transfers or licenses made by
 11 him under the copyright.

12 (b) **ERROR IN DATE.**—When the year date in the notice on copies or
 13 phonorecords distributed by authority of the copyright owner is
 14 earlier than the year in which publication first occurred, any period
 15 computed from the year of first publication under section 302 is to be
 16 computed from the year in the notice. Where the year date is more
 17 than one year later than the year in which publication first occurred,
 18 the work is considered to have been published without any notice and
 19 is governed by the provisions of section 405.

20 (c) **OMISSION OF NAME OR DATE.**—Where copies or phonorecords
 21 publicly distributed by authority of the copyright owner contain no
 22 name or no date that could reasonably be considered a part of the
 23 notice, the work is considered to have been published without any
 24 notice and is governed by the provisions of section 405.

25 **§ 407. Deposit of copies or phonorecords for Library of Congress**

26 (a) Except as provided by subsection (c), the owner of copyright
 27 or of the exclusive right of publication in a work published with no-
 28 tice of copyright in the United States shall deposit, within three
 29 months after the date of such publication:

30 (1) two complete copies of the best edition; or

31 (2) if the work is a sound recording, two complete phono-
 32 records of the best edition, together with any printed or other
 33 visually-perceptible material published with such phonorecords.

34 This deposit is not a condition of copyright protection.

35 (b) The required copies or phonorecords shall be deposited in the
 36 Copyright Office for the use or disposition of the Library of Congress.
 37 The Register of Copyrights shall, when requested by the depositor
 38 and upon payment of the fee prescribed by section 708, issue a receipt
 39 for the deposit.

40 (c) The Register of Copyrights may by regulation exempt any

1 categories of material from the deposit requirements of this section.
 2 or require deposit of only one copy or phonorecord with respect to
 3 any categories.

4 (d) At any time after publication of a work as provided by sub-
 5 section (a), the Register of Copyrights may make written demand
 6 for the required deposit on any of the persons obligated to make the
 7 deposit under subsection (a). Unless deposit is made within three
 8 months after the demand is received, the person or persons on whom
 9 the demand was made are liable:

10 (1) to a fine of not more than \$250 for each work; and

11 (2) to pay to the Library of Congress the total retail price of
 12 the copies or phonorecords demanded, or, if no retail price has
 13 been fixed, the reasonable cost to the Library of Congress of
 14 acquiring them.

15 § 408. Copyright registration in general

16 (a) REGISTRATION PERMISSIVE.—At any time during the subsistence
 17 of copyright in any published or unpublished work, the owner of
 18 copyright or of any exclusive right in the work may obtain registration
 19 of the copyright claim by delivering to the Copyright Office the deposit
 20 specified by this section, together with the application and fee specified
 21 by sections 409 and 708. Subject to the provisions of section 405(a),
 22 such registration is not a condition of copyright protection.

23 (b) DEPOSIT FOR COPYRIGHT REGISTRATION.—Except as provided by
 24 subsection (c), the material deposited for registration shall include:

25 (1) in the case of an unpublished work, one complete copy or
 26 phonorecord;

27 (2) in the case of a published work, two complete copies or
 28 phonorecords of the best edition;

29 (3) in the case of a work first published abroad, one complete
 30 copy or phonorecord as so published;

31 (4) in the case of a contribution to a collective work, one com-
 32 plete copy or phonorecord of the best edition of the collective
 33 work.

34 Copies or phonorecords deposited for the Library of Congress under
 35 section 407 may be used to satisfy the deposit provisions of this section,
 36 if they are accompanied by the prescribed application and fee, and by
 37 any additional identifying material that the Register may, by regula-
 38 tion, require.

39 (c) ADMINISTRATIVE CLASSIFICATION AND OPTIONAL DEPOSIT.—The
 40 Register of Copyrights is authorized to specify by regulation the

1 administrative classes into which works are to be placed for purposes of
 2 deposit and registration, and the nature of the copies or phonorecords
 3 to be deposited in the various classes specified. The regulations may
 4 require or permit, for particular classes, the deposit of identifying
 5 material instead of copies or phonorecords, the deposit of only one copy
 6 or phonorecord where two would normally be required, or a single
 7 registration for a group of related works. This administrative classi-
 8 fication of works has no significance with respect to the subject matter
 9 of copyright or the exclusive rights provided by this title.

10 (d) CORRECTIONS AND AMPLIFICATIONS.—The Register may also
 11 establish, by regulation, formal procedures for the filing of an applica-
 12 tion for supplementary registration, to correct an error in a copyright
 13 registration or to amplify the information given in a registration. Such
 14 application shall be accompanied by the fee provided by section 708,
 15 and shall clearly identify the registration to be corrected or amplified.
 16 The information contained in a supplementary registration augments
 17 but does not supersede that contained in the earlier registration.

18 (e) PUBLISHED EDITION OF PREVIOUSLY REGISTERED WORK.—Reg-
 19 istration for the first published edition of a work previously registered
 20 in unpublished form may be made even though the work as published is
 21 substantially the same as the unpublished version.

22 § 409. Application for registration

23 The application for copyright registration shall be made on a form
 24 prescribed by the Register of Copyrights and shall include:

- 25 (1) the name and address of the copyright claimant;
- 26 (2) in the case of a work other than an anonymous or pseudony-
 27 mous work, the name and nationality or domicile of the author or
 28 authors and, if one or more of the authors is dead, the dates of
 29 their deaths;
- 30 (3) if the work is anonymous or pseudonymous, the nationality
 31 or domicile of the author or authors;
- 32 (4) in the case of a work made for hire, a statement to this
 33 effect;
- 34 (5) if the copyright claimant is not the author, a brief state-
 35 ment of how the claimant obtained ownership of the copyright;
- 36 (6) the title of the work, together with any previous or alterna-
 37 tive titles under which the work can be identified;
- 38 (7) the year in which creation of the work was completed;
- 39 (8) if the work has been published, the date and nation of its
 40 first publication;

(9) in the case of a compilation or derivative work, an identification of any pre-existing work or works that it is based on or incorporates, and a brief, general statement of the additional material covered by the copyright claim being registered;

(10) in the case of a published work containing material of which copies are required by section 601 to be manufactured in the United States, the names of the persons or organizations who performed the processes specified by subsection (c) of section 601 with respect to that material, and the places where those processes were performed; and

(11) any other information regarded by the Register of Copyrights as bearing upon the preparation or identification of the work or the existence, ownership, or duration of the copyright.

§ 410. Registration of claim and issuance of certificate

(a) When, after examination, the Register of Copyrights determines that, in accordance with the provisions of this title, the material deposited constitutes copyrightable subject matter and that the other legal and formal requirements of this title have been met, he shall register the claim and issue to the applicant a certificate of registration under the seal of the Copyright Office. The certificate shall contain the information given in the application, together with the number and effective date of the registration.

(b) In any case in which the Register of Copyrights determines that, in accordance with the provisions of this title, the material deposited does not constitute copyrightable subject matter or that the claim is invalid for any other reason, he shall refuse registration and shall notify the applicant in writing of the reasons for his action.

(c) In any judicial proceedings the certificate of a registration made before or within five years after first publication of the work shall constitute prima facie evidence of the validity of the copyright and of the facts stated in the certificate. The evidentiary weight to be accorded the certificate of a registration made thereafter shall be within the discretion of the court.

(d) The effective date of a copyright registration is the day on which an application, deposit, and fee, which are later determined by the Register of Copyrights or by a court of competent jurisdiction to be acceptable for registration, have all been received in the Copyright Office.

1 **§ 411. Registration as prerequisite to infringement suit**

2 (a) Subject to the provisions of subsection (b), no action for in-
3 fringement of the copyright in any work shall be instituted until
4 registration of the copyright claim has been made in accordance with
5 this title. In any case, however, where the deposit, application, and fee
6 required for registration have been delivered to the Copyright Office
7 in proper form and registration has been refused, the applicant is
8 entitled to institute an action for infringement if notice thereof, with
9 a copy of the complaint, is served on the Register of Copyrights. The
10 Register may, at his option, become a party to the action with respect
11 to the issue of registrability of the copyright claim by entering his
12 appearance within sixty days after such service, but his failure to do
13 so shall not deprive the court of jurisdiction to determine that issue.

14 (b) In the case of a work consisting of sounds, images, or both, the
15 first fixation of which is made simultaneously with its transmission,
16 the copyright owner may either before or after such fixation takes
17 place, institute an action for infringement under section 501, fully
18 subject to the remedies provided by sections 502 through 506, if, in
19 accordance with requirements that the Register of Copyrights shall
20 prescribe by regulation, the copyright owner—

21 (1) serves notice upon the infringer, not less than ten or more
22 than thirty days before such fixation, identifying the work and
23 the specific time and source of its first transmission, and declar-
24 ing an intention to secure copyright in the work; and

25 (2) makes registration for the work within three months after
26 its first transmission.

27 **§ 412. Registration as prerequisite to certain remedies for**
28 **infringement**

29 In any action under this title, other than an action instituted under
30 section 411(b), no award of statutory damages or of attorney's fees, as
31 provided by sections 504 and 505, shall be made for:

32 (1) any infringement of copyright in an unpublished work
33 commenced before the effective date of its registration; or

34 (2) any infringement of copyright commenced after first pub-
35 lication of the work and before the effective date of its registra-
36 tion, unless such registration is made within three months after
37 its first publication.

1 Chapter 5.—COPYRIGHT INFRINGEMENT AND REMEDIES

Sec

501. Infringement of copyright.

502. Remedies for infringement: Injunctions.

503. Remedies for infringement: Impounding and disposition of infringing articles.

504. Remedies for infringement: Damages and profits.

505. Remedies for infringement: Costs and attorney's fees.

506. Criminal offenses.

507. Limitations on actions.

508. Notification of filing and determination of actions.

2 § 501. Infringement of copyright

3 (a) Anyone who violates any of the exclusive rights of the copy-
4 right owner as provided by sections 106 through 117, or who imports
5 copies or phonorecords into the United States in violation of section
6 602, is an infringer of the copyright.

7 (b) The legal or beneficial owner of an exclusive right under a
8 copyright is entitled, subject to the requirements of sections 205(d)
9 and 411, to institute an action for any infringement of that particular
10 right committed while he is the owner of it. The court may require
11 him to serve written notice of the action with a copy of the complaint
12 upon any person shown, by the records of the Copyright Office or
13 otherwise, to have or claim an interest in the copyright, and shall re-
14 quire that such notice be served upon any person whose interest is
15 likely to be affected by a decision in the case. The court may require
16 the joinder, and shall permit the intervention, of any person having
17 or claiming an interest in the copyright.

18 (c) For any secondary transmission by a cable system that em-
19 bodies a performance or a display of a work which is actionable as an
20 act of infringement under subsection (c) of section 111, a television
21 broadcast station holding a copyright or other license to transmit or
22 perform the same version of that work shall, for purpose of subsection
23 (b) of this section, be treated as a legal or beneficial owner if such
24 secondary transmission occurs within the local service area of that
25 television station.

26 § 502. Remedies for infringement: Injunctions

27 (a) Any court having jurisdiction of a civil action arising under
28 this title may, subject to the provisions of section 1498 of title 28,
29 grant temporary and final injunctions on such terms as it may deem
30 reasonable to prevent or restrain infringement of a copyright.

31 (b) Any such injunction may be served anywhere in the United
32 States on the person enjoined; it shall be operative throughout the
33 United States and shall be enforceable, by proceedings in contempt or
34 otherwise, by any United States court having jurisdiction of that per-

son. The clerk of the court granting the injunction shall, when requested by any other court in which enforcement of the injunction is sought, transmit promptly to the other court a certified copy of all the papers in the case on file in his office.

§ 503. Remedies for infringement: Impounding and disposition of infringing articles

(a) At any time while an action under this title is pending, the court may order the impounding, on such terms as it may deem reasonable, of all copies or phonorecords claimed to have been made or used in violation of the copyright owner's exclusive rights, and of all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such copies or phonorecords may be reproduced.

(b) As part of a final judgment or decree, the court may order the destruction or other reasonable disposition of all copies or phonorecords found to have been made or used in violation of the copyright owner's exclusive rights, and of all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such copies or phonorecords may be reproduced.

§ 504. Remedies for infringement: Damages and profits

(a) IN GENERAL.—Except as otherwise provided by this title, an infringer of copyright is liable for either:

- (1) the copyright owner's actual damages and any additional profits of the infringer, as provided by subsection (b); or
- (2) statutory damages, as provided by subsection (c).

(b) ACTUAL DAMAGES AND PROFITS.—The copyright owner is entitled to recover the actual damages suffered by him as a result of the infringement, and any profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages. In establishing the infringer's profits, the copyright owner is required to present proof only of the infringer's gross revenue, and the infringer is required to prove his deductible expenses and the elements of profit attributable to factors other than the copyrighted work.

(c) STATUTORY DAMAGES.—

- (1) Except as provided by clause (2) of this subsection, the copyright owner may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in the action, with respect to any one work, for which any one infringer is liable individually, or for which any two or more

infringers are liable jointly and severally, in a sum of not less than \$250 or more than \$10,000 as the court considers just. For the purposes of this subsection, all the parts of a compilation or derivative work constitute one work.

(2) In a case where the copyright owner sustains the burden of proving, and the court finds, that infringement was committed willfully, the court in its discretion may increase the award of statutory damages to a sum of not more than \$50,000. In a case where the infringer sustains the burden of proving, and the court finds, that he was not aware and had no reason to believe that his acts constituted an infringement of copyright, the court in its discretion may reduce the award of statutory damages to a sum of not less than \$100. In a case where an instructor, librarian or archivist in a nonprofit educational institution, library, or archives, who infringed by reproducing a copyrighted work in copies or phonorecords, sustains the burden of proving that he believed and had reasonable grounds for believing that the reproduction was a fair use under section 107, the court in its discretion may remit statutory damages in whole or in part.

§ 505. Remedies for infringement: Costs and attorney's fees

In any civil action under this title, the court in its discretion may allow the recovery of full costs by or against any party other than the United States or an officer thereof. Except as otherwise provided by this title, the court may also award a reasonable attorney's fee to the prevailing party as part of the costs.

§ 506. Criminal offenses

(a) **CRIMINAL INFRINGEMENT.**—Any person who infringes a copyright willfully and for purposes of commercial advantage or private financial gain shall be fined not more than \$2,500 or imprisoned not more than one year, or both, for the first such offense, and shall be fined not more than \$10,000 or imprisoned not more than three years, or both, for any subsequent offense, provided however, that any person who infringes willfully and for purposes of commercial advantage or private financial gain the copyright in a sound recording afforded by subsections (1) and (3) in section 106 or the copyright in a motion picture afforded by subsections (1), (3), and (4) in section 106 shall be fined not more than \$25,000 or imprisoned for not more than three years, or both, for the first such offense and shall be fined not more than \$50,000 or imprisoned not more than seven years, or both, for any subsequent offense.

1 (b) **FRAUDULENT COPYRIGHT NOTICE.**—Any person who, with fraud-
 2 ulent intent, places on any article a notice of copyright or words of
 3 the same purport that he knows to be false, or who, with fraudulent
 4 intent, publicly distributes or imports for public distribution any
 5 article bearing such notice or words that he knows to be false, shall be
 6 fined not more than \$2,500.

7 (c) **FRAUDULENT REMOVAL OF COPYRIGHT NOTICE.**—Any person who
 8 with fraudulent intent, removes or alters any notice of copyright
 9 appearing on a copy of a copyrighted work shall be fined not more
 10 than \$2,500.

11 (d) **FALSE REPRESENTATION.**—Any person who knowingly makes a
 12 false representation of a material fact in the application for copyright
 13 registration provided for by section 409, or in any written statement
 14 filed in connection with the application, shall be fined not more than
 15 \$2,500.

16 **§ 507. Limitations on actions**

17 (a) **CRIMINAL PROCEEDINGS.**—No criminal proceeding shall be main-
 18 tained under the provisions of this title unless it is commenced within
 19 three years after the cause of action arose.

20 (b) **CIVIL ACTIONS.**—No civil action shall be maintained under the
 21 provisions of this title unless it is commenced within three years after
 22 the claim accrued.

23 **§ 508. Notification of filing and determination of actions**

24 (a) Within one month after the filing of any action under this title,
 25 the clerks of the courts of the United States shall send written notifica-
 26 tion to the Register of Copyrights setting forth, as far as is shown
 27 by the papers filed in the court, the names and addresses of the parties
 28 and the title, author, and registration number of each work involved
 29 in the action. If any other copyrighted work is later included in the
 30 action by amendment, answer, or other pleading, the clerk shall also
 31 send a notification concerning it to the Register within one month
 32 after the pleading is filed.

33 (b) Within one month after any final order or judgment is issued
 34 in the case, the clerk of the court shall notify the Register of it,
 35 sending him a copy of the order or judgment together with the written
 36 opinion, if any, of the court.

37 (c) Upon receiving the notifications specified in this section, the
 38 Register shall make them a part of the public records of the Copyright
 39 Office.

Chapter 6.—MANUFACTURING REQUIREMENT AND IMPORTATION

Sec.

001. Manufacture, importation, and public distribution of certain copies.

002. Infringing importation of copies or phonorecords.

003. Importation prohibitions: Enforcement and disposition of excluded articles.

§ 601. Manufacture, importation, and public distribution of certain copies

(a) Except as provided by subsection (b), the importation into or public distribution in the United States of copies of a work consisting preponderantly of nondramatic literary material that is in the English language and is protected under this title is prohibited unless the portions consisting of such material have been manufactured in the United States or Canada.

(b) The provisions of subsection (a) do not apply:

(1) where, on the date when importation is sought or public distribution in the United States is made, the author of any substantial part of such material is neither a national nor a domiciliary of the United States or, if he is a national of the United States, has been domiciled outside of the United States for a continuous period of at least one year immediately preceding that date; in the case of work made for hire, the exemption provided by this clause does not apply unless a substantial part of the work was prepared for an employer or other person who is not a national or domiciliary of the United States or a domestic corporation or enterprise;

(2) where the Bureau of Customs is presented with an import statement issued under the seal of the Copyright Office, in which case a total of no more than two thousand copies of any one such work shall be allowed entry; the import statement shall be issued upon request to the copyright owner or to a person designated by him at the time of registration for the work under section 408 or at any time thereafter;

(3) where importation is sought under the authority or for the use, other than in schools, of the government of the United States or of any State or political subdivision of a State;

(4) where importation, for use and not for sale, is sought:

(A) by any person with respect to no more than one copy of any one work at any one time;

(B) by any person arriving from abroad, with respect to copies forming part of his personal baggage; or

1 (C) by an organization operated for scholarly, educa-
 2 tional, or religious purposes and not for private gain, with
 3 respect to copies intended to form a part of its library;

4 (5) where the copies are reproduced in raised characters for
 5 the use of the blind;

6 (6) where, in addition to copies imported under clauses (3)
 7 and (4) of this subsection, no more than two thousand copies of
 8 any one such work, which have not been manufactured in the
 9 United States or Canada, are publicly distributed in the United
 10 States.

11 (c) The requirement of this section that copies be manufactured in
 12 the United States or Canada is satisfied if:

13 (1) in the case where the copies are printed directly from type
 14 that has been set, or directly from plates made from such type,
 15 the setting of the type and the making of the plates have been
 16 performed in the United States or Canada; or

17 (2) in the case where the making of plates by a lithographic
 18 or photoengraving process is a final or intermediate step preceding
 19 the printing of the copies, the making of the plates has been per-
 20 formed in the United States or Canada; and

21 (3) in any case, the printing or other final process of producing
 22 multiple copies and any binding of the copies have been performed
 23 in the United States or Canada.

24 (d) Importation or public distribution of copies in violation of
 25 this section does not invalidate protection for a work under this title.
 26 However, in any civil action or criminal proceeding for infringement
 27 of the exclusive rights to reproduce and distribute copies of the work,
 28 the infringer has a complete defense with respect to all of the non-
 29 dramatic literary material comprised in the work and any other parts
 30 of the work in which the exclusive rights to reproduce and distribute
 31 copies are owned by the same person who owns such exclusive rights
 32 in the nondramatic literary material, if he proves:

33 (1) that copies of the work have been imported into or publicly
 34 distributed in the United States in violation of this section by or
 35 with the authority of the owner of such exclusive rights; and

36 (2) that the infringing copies were manufactured in the United
 37 States or Canada in accordance with the provisions of subsection
 38 (c); and

39 (3) that the infringement was commenced before the effective

1 date of registration for an authorized edition of the work, the
 2 copies of which have been manufactured in the United States or
 3 Canada in accordance with the provisions of subsection (c).

4 (e) In any action for infringement of the exclusive rights to repro-
 5 duce and distribute copies of a work containing material required by
 6 this section to be manufactured in the United States or Canada, the
 7 copyright owner shall set forth in the complaint the names of the per-
 8 sons or organizations who performed the processes specified by subsec-
 9 tion (c) with respect to that material, and the places where those
 10 processes were performed.

11 **§ 602. Infringing importation of copies or phonorecords**

12 (a) Importation into the United States, without the authority of
 13 the owner of copyright under this title, of copies or phonorecords of
 14 a work that have been acquired abroad is an infringement of the
 15 exclusive right to distribute copies or phonorecords under section 106.
 16 actionable under section 501. This subsection does not apply to:

17 (1) importation of copies or phonorecords under the authority
 18 or for the use of the government of the United States or of any
 19 State or political subdivision of a State but not including copies
 20 or phonorecords for use in schools, or copies of any audiovisual
 21 work imported for purposes other than archival use;

22 (2) importation, for the private use of the importer and not
 23 for distribution, by any person with respect to no more than one
 24 copy or phonorecord of any one work at any one time, or by any
 25 person arriving from abroad with respect to copies or phono-
 26 records forming part of his personal baggage; or

27 (3) importation by or for an organization operated for schol-
 28 arly, educational, or religious purposes and not for private gain,
 29 with respect to no more than one copy of an audiovisual work
 30 solely for its archival purposes, and no more than five copies or
 31 phonorecords of any other work for its library lending or archival
 32 purposes.

33 (b) In a case where the making of the copies or phonorecords would
 34 have constituted an infringement of copyright if this title had been
 35 applicable, their importation is prohibited. In a case where the copies
 36 or phonorecords were lawfully made, the Bureau of Customs has no
 37 authority to prevent their importation unless the provisions of section
 38 601 are applicable. In either case, the Secretary of the Treasury is
 39 authorized to prescribe, by regulation, a procedure under which any

1 person claiming an interest in the copyright in a particular work may,
 2 upon payment of a specified fee, be entitled to notification by the
 3 Bureau of the importation of articles that appear to be copies or
 4 phonorecords of the work.

5 **§ 603. Importation prohibitions: Enforcement and disposition of**
 6 **excluded articles**

7 (a) The Secretary of the Treasury and the Postmaster General shall
 8 separately or jointly make regulations for the enforcement of the
 9 provisions of this title prohibiting importation.

10 (b) These regulations may require, as a condition for the exclusion
 11 of articles under section 602:

12 (1) that the person seeking exclusion obtain a court order
 13 enjoining importation of the articles; or

14 (2) that he furnish proof, of a specified nature and in accord-
 15 ance with prescribed procedures, that the copyright in which he
 16 claims an interest is valid and that the importation would violate
 17 the prohibition in section 602; he may also be required to post a
 18 surety bond for any injury that may result if the detention or
 19 exclusion of the articles proves to be unjustified.

20 (c) Articles imported in violation of the importation prohibitions
 21 of this title are subject to seizure and forfeiture in the same manner
 22 as property imported in violation of the customs revenue laws. For-
 23 feited articles shall be destroyed as directed by the Secretary of the
 24 Treasury or the court, as the case may be; however, the articles may be
 25 returned to the country of export whenever it is shown to the satisfac-
 26 tion of the Secretary of the Treasury that the importer had no reason-
 27 able grounds for believing that his acts constituted a violation of law.

28 **Chapter 7.—COPYRIGHT OFFICE**

Sec.

701. The Copyright Office: General responsibilities and organization.

702. Copyright Office regulations.

703. Effective date of actions in Copyright Office.

704. Retention and disposition of articles deposited in Copyright Office.

705. Copyright Office records: Preparation, maintenance, public inspection, and
 searching.

706. Copies of Copyright Office records.

707. Copyright Office forms and publications.

708. Copyright Office fees.

709. Delay in delivery caused by disruption of postal or other services.

29 **§ 701. The Copyright Office: General responsibilities and organi-**
 30 **zation**

31 (a) All administrative functions and duties under this title, ex-
 32 cept as otherwise specified, are the responsibility of the Register of
 33 Copyrights as director of the Copyright Office in the Library of Con-

gress. The Register of Copyrights, together with the subordinate officer and employees of the Copyright Office, shall be appointed by the Librarian of Congress, and shall act under his general direction and supervision.

(b) The Register of Copyrights shall adopt a seal to be used on and after January 1, 1975, to authenticate all certified documents issued by the Copyright Office.

(c) The Register of Copyrights shall make an annual report to the Librarian of Congress of the work and accomplishments of the Copyright Office during the previous fiscal year. The annual report of the Register of Copyrights shall be published separately and as a part of the annual report of the Librarian of Congress.

§ 702. Copyright Office regulations

The Register of Copyrights is authorized to establish regulations not inconsistent with law for the administration of the functions and duties made his responsibility under this title. All regulations established by the Register under this title are subject to the approval of the Librarian of Congress.

§ 703. Effective date of actions in Copyright Office

In any case in which time limits are prescribed under this title for the performance of an action in the Copyright Office, and in which the last day of the prescribed period falls on a Saturday, Sunday, holiday or other non-business day within the District of Columbia or the Federal Government, the action may be taken on the next succeeding business day, and is effective as of the date when the period expired.

§ 704. Retention and disposition of articles deposited in Copyright Office

(a) Upon their deposit in the Copyright Office under sections 407 and 408, all copies, phonorecords, and identifying material, including those deposited in connection with claims that have been refused registration, are the property of the United States Government.

(b) In the case of published works, all copies, phonorecords, and identifying material deposited are available to the Library of Congress for its collections, or for exchange or transfer to any other library. In the case of unpublished works, the Library is entitled to select any deposits for its collections.

(c) Deposits not selected by the Library under subsection (b), or identifying portions or reproductions of them, shall be retained under the control of the Copyright Office, including retention in Govern-

ment storage facilities, for the longest period considered practicable and desirable by the Register of Copyrights and the Librarian of Congress. After that period it is within the joint discretion of the Register and the Librarian to order their destruction or other disposition; but, in the case of unpublished works, no deposit shall be destroyed or otherwise disposed of during its term of copyright.

(d) The depositor of copies, phonorecords, or identifying material under section 408, or the copyright owner of record, may request retention, under the control of the Copyright Office, of one or more of such articles for the full term of copyright in the work. The Register of Copyright shall prescribe, by regulation, the conditions under which such requests are to be made and granted, and shall fix the fee to be charged under section 708(a)(12) if the request is granted.

§ 705. Copyright Office records: Preparation, maintenance, public inspection, and searching

(a) The Register of Copyrights shall provide and keep in the Copyright Office records of all deposits, registrations, recordations, and other actions taken under this title, and shall prepare indexes of all such records.

(b) Such records and indexes, as well as the articles deposited in connection with completed copyright registrations and retained under the control of the Copyright Office, shall be open to public inspection.

(c) Upon request and payment of the fee specified by section 708, the Copyright Office shall make a search of its public records, indexes, and deposits, and shall furnish a report of the information they disclose with respect to any particular deposits, registrations, or recorded documents.

§ 706. Copies of Copyright Office records

(a) Copies may be made of any public records or indexes of the Copyright Office; additional certificates of copyright registration and copies of any public records or indexes may be furnished upon request and payment of the fees specified by section 708.

(b) Copies or reproductions of deposited articles retained under the control of the Copyright Office shall be authorized or furnished only under the conditions specified by the Copyright Office regulations.

§ 707. Copyright Office forms and publications

(a) CATALOG OF COPYRIGHT ENTRIES.—The Register of Copyrights shall compile and publish at periodic intervals catalogs of all copyright registrations. These catalogs shall be divided into parts in accordance with the various classes of works, and the Register has

discretion to determine on the basis of practicability and usefulness, the form and frequency of publication of each particular part.

(b) OTHER PUBLICATIONS.—The Register shall furnish, free of charge upon request, application forms for copyright registration and general informational material in connection with the functions of the Copyright Office. He also has authority to publish compilations of information, bibliographies, and other material he considers to be of value to the public.

(c) DISTRIBUTION OF PUBLICATIONS.—All publications of the Copyright Office shall be furnished to depository libraries as specified under section 1905 of title 44, United States Code, and, aside from those furnished free of charge, shall be offered for sale to the public at prices based on the cost of reproduction and distribution.

§ 708. Copyright Office fees

(a) The following fees shall be paid to the Register of Copyrights:

(1) for the registration of a copyright claim or a supplementary registration under section 408, including the issuance of a certificate of registration, \$6;

(2) for the registration of a claim to renewal of a subsisting copyright in its first term under section 304(a), including the issuance of a certificate of registration, \$4;

(3) for the issuance of a receipt for a deposit under section 407, \$2;

(4) for the recordation, as provided by section 205, of a transfer of copyright ownership or other document of six pages or less, covering no more than one title, \$5; for each page over six and for each title over one, 50 cents additional;

(5) for the filing, under section 115(b), of a notice of intention to make phonorecords, \$3;

(6) for the recordation, under section 302(c), of a statement revealing the identity of an author of an anonymous or pseudonymous work, or for the recordation, under section 302(d), of a statement relating to the death of an author, \$5 for a document of six pages or less, covering no more than one title; for each page over six and for each title over one, 50 cents additional;

(7) for the issuance, under section 601, of an import statement, \$3;

(8) for the issuance, under section 706, of an additional certificate of registration, \$2;

1 (9) for the issuance of any other certification, \$3; the Register
2 of Copyrights has discretion, on the basis of their cost, to fix the
3 fees for preparing copies of Copyright Office records, whether
4 they are to be certified or not;

5 (10) for the making and reporting of a search as provided by
6 section 7-5, and for any related services, \$5 for each hour or frac-
7 tion of an hour consumed;

8 (11) for any other special services requiring a substantial
9 amount of time or expense, such fees as the Register of Copyrights
10 may fix on the basis of the cost of providing the service.

11 (b) The fees prescribed by or under this section are applicable to the
12 United States Government and any of its agencies, employees, or
13 officers, but the Register of Copyrights has discretion to waive the
14 requirement of this subsection in occasional or isolated cases involving
15 relatively small amounts.

16 **§ 709. Delay in delivery caused by disruption of postal or other**
17 **services**

18 In any case in which the Register of Copyright determines, on the
19 basis of such evidence as he may by regulation require, that a deposit,
20 application, fee, or any other material to be delivered to the Copyright
21 Office by a particular date, would have been received in the Copyright
22 Office in due time except for a general disruption or suspension of
23 postal or other transportation or communications services, the actual
24 receipt of such material in the Copyright Office within one month after
25 the date on which the Register determines that the disruption or sus-
26 pension of such services has terminated, shall be considered timely.

27 **Chapter 8.—COPYRIGHT ROYALTY TRIBUNAL**

Sec.

§01. Copyright Royalty Tribunal; Establishment and purpose.

§02. Petitions for the adjustment of royalty rates.

§03. Membership of the Tribunal.

§04. Procedures of the Tribunal.

§05. Compensation of members of the Tribunal; expenses of the Tribunal.

§06. Reports to the Congress.

§07. Effective date of royalty adjustment.

§08. Effective date of royalty distribution.

§09. Judicial review.

28 **§ 801. Copyright Royalty Tribunal: Establishment and purpose**

29 (a) There is hereby created in the Library of Congress a Copyright
30 Royalty Tribunal.

31 (b) Subject to the provisions of this chapter, the purpose of the
32 Tribunal shall be: (1) to make determinations concerning the adjust-
33 ment of the copyright royalty rates specified by sections 111 and 115
34 so as to assure that such rates are reasonable and in the event that the

Tribunal shall determine that the statutory royalty rate, or a rate previously established by the Tribunal, or the revenue basis in respect to section 111, does not provide a reasonable royalty fee for the basic service of providing secondary transmissions of the primary broadcast transmitter or is otherwise unreasonable, the Tribunal may change the royalty rate or the revenue bases on which the royalty fee shall be assessed or both so as to assure reasonable royalty fee; and (2) to determine in certain circumstances the distribution of the royalty fees deposited with the Register of Copyrights under sections 111 and 116.

§ 802. Petitions for the adjustment of royalty rates

(a) On July 1, 1975, the Register of Copyrights shall cause to be published in the Federal Register notice of the commencement of proceedings for the review of the royalty rates specified by sections 111, 114, and 115.

(b) During the calendar year 1982, and in each subsequent fifth calendar year, any owner or user of a copyrighted work whose royalty rates are specified by this title, or by a rate established by the Tribunal, may file a petition with the Register of Copyrights declaring that the petitioner requests an adjustment of the rate. The Register shall make a determination as to whether the applicant has a significant interest in the royalty rate in which an adjustment is requested. If the Register determines that the petitioner has a significant interest, he shall cause notice of his decision to be published in the Federal Register.

§ 803. Membership of the Tribunal

(a) In accordance with Section 802, or upon certifying the existence of a controversy concerning the distribution of royalty fees deposited pursuant to section 111, the Register shall request the American Arbitration Association or any similar successor organization to furnish a list of three members of said Association. The Register shall communicate the names together with such information as may be appropriate to all parties of interest. Any such party within twenty days from the date said communication is sent may submit to the Register written objections to any or all of the proposed names. If no such objections are received, or if the Register determines that said objections are not well founded, he shall certify the appointment of the three designated individuals to constitute a panel of the Tribunal for the consideration of the specified rate or royalty distribution. Such panel shall function as the Tribunal established in section 801. If the Register determines that the objections to the designation of one or more of the proposed

1 individuals are well founded, the Register shall request the American
2 Arbitration Association or any similar successor organization to pro-
3 pose the necessary number of substitute individuals. Upon receiving
4 such additional names the Register shall constitute the panel. The Reg-
5 ister shall designate one member of the panel as Chairman.

6 (b) If any member of a panel becomes unable to perform his duties,
7 the Register, after consultation with the parties, may provide for the
8 selection of a successor in the manner prescribed in subsection (a).

9 **§ 804. Procedures of the Tribunal**

10 (a) The Tribunal shall fix a time and place for its proceedings and
11 shall cause notice to be given to the parties.

12 (b) Any organization or person entitled to participate in the pro-
13 ceedings may appear directly or be represented by counsel.

14 (c) Except as otherwise provided by law, the Tribunal shall deter-
15 mine its own procedure. For the purpose of carrying out the provisions
16 of this chapter, the Tribunal may hold hearings, administer oaths,
17 and require, by subpoena or otherwise, the attendance and testimony
18 of witnesses and the production of documents.

19 (d) Every final decision of the Tribunal shall be in writing and
20 shall state the reasons therefor.

21 (e) The Tribunal shall render a final decision in each proceeding
22 within one year from the certification of the panel. Upon a showing
23 of good cause, the Senate Committee on the Judiciary and the House of
24 Representatives Committee on the Judiciary may waive this require-
25 ment in a particular proceeding.

26 **§ 805. Compensation of members of the Tribunal; expenses of the**
27 **Tribunal**

28 (a) In proceedings for the distribution of royalty fees, the compen-
29 sation of members of the Tribunal and other expenses of the Tribunal
30 shall be deducted prior to the distribution of the funds.

31 (b) In proceedings for the adjustment of royalty rates, there is
32 hereby authorized to be appropriated such sums as may be necessary.

33 (c) The Library of Congress is authorized to furnish facilities and
34 incidental service to the Tribunal.

35 (d) The Tribunal is authorized to procure temporary and inter-
36 mittent services to the same extent as is authorized by section 3109 of
37 title 5, United States Code.

38 **§ 806. Reports to the Congress**

39 The Tribunal immediately upon making a final determination in
40 any proceeding for adjustment of a statutory royalty shall transmit

its decision, together with the reasons therefor, to the Secretary of the Senate and the Clerk of the House of Representatives for reference to the Judiciary Committees of the Senate and the House of Representatives.

§ 807. Effective date of royalty adjustment

(a) Prior to the expiration of the first period of ninety calendar days of continuous session of the Congress, following the transmittal of the report specified in section 806, either House of the Congress may adopt a resolution stating in substance that the House does not favor the recommended royalty adjustment, and such adjustment, therefore, shall not become effective.

(b) For the purposes of subsection (a) of this section

(1) Continuity of session shall be considered as broken only by an adjournment of the Congress sine die, and

(2) In the computation of the ninety-day period there shall be excluded the days on which either House is not in session because of an adjournment of more than three days to a day certain.

(c) In the absence of the passage of such a resolution by either House during said ninety-day period, the final determination by the Tribunal of a petition for adjustment shall take effect on the first day following ninety calendar days after the expiration of the period specified by subsection (a).

(d) The Register of Copyrights shall give notice of such effective date by publication in the Federal Register not less than sixty days before said date.

§ 808. Effective date of royalty distribution

A final determination of the Tribunal concerning the distribution of royalty fees deposited with the Register of Copyrights pursuant to sections 111 and 116 shall become effective thirty days following such determination unless prior to that time an application has been filed pursuant to section 809 to vacate, modify or correct the determination, and notice of such application has been served upon the Register of Copyrights. The Register upon the expiration of thirty days shall distribute such royalty fees not subject to any application filed pursuant to section 809.

§ 809. Judicial review

In any of the following cases the United States District Court for the District of Columbia may make an order vacating, modifying or correcting a final determination of the Tribunal concerning the distribution of royalty fees--

1 (a) Where the determination was procured by corruption, fraud,
2 or undue means.

3 (b) Where there was evident partiality or corruption in any mem-
4 ber of the panel.

5 (c) Where any member of the panel was guilty of any misconduct
6 by which the rights of any party have been prejudiced.

7 TRANSITIONAL AND SUPPLEMENTARY PROVISIONS

8 SEC. 102. This title becomes effective on January 1, 1975, except as
9 otherwise provided by section 304(b) of title 17 as amended by this
10 title.

11 SEC. 103. This title does not provide copyright protection for any
12 work that goes into the public domain before January 1, 1975. The
13 exclusive rights, as provided by section 106 of title 17 as amended
14 by this title, to reproduce a work in phonorecords and to distribute
15 phonorecords of the work, do not extend to any nondramatic musical
16 work copyrighted before July 1, 1909.

17 SEC. 104. All proclamations issued by the President under sections
18 1(e) or 9(b) of title 17 as it existed on December 31, 1974, or under
19 previous copyright statutes of the United States shall continue in
20 force until terminated, suspended, or revised by the President.

21 SEC. 105. (a) (1) Section 505 of title 44, United States Code, Sup-
22 plement IV, is amended to read as follows:

23 **"§ 505. Sale of duplicate plates**

24 "The Public Printer shall sell, under regulations of the Joint Com-
25 mittee on Printing to persons who may apply, additional or duplicate
26 stereotype or electrotpe plates from which a Government publication
27 is printed, at a price not to exceed the cost of composition, the metal,
28 and making to the Government, plus 10 per centum, and the full
29 amount of the price shall be paid when the order is filed."

30 (2) The item relating to section 505 in the sectional analysis at the
31 beginning of chapter 5 of title 44, United States Code, is amended to
32 read as follows:

"505. Sale of duplicate plates."

34 (b) Section 2113 of title 44, United States Code, is amended to read
35 as follows:

36 **"§ 2113. Limitation on liability**

37 "When letters and other intellectual productions (exclusive of
38 patented material, published works under copyright protection, and
39 unpublished works for which copyright registration has been made)
40 come into the custody or possession of the Administrator of General

1 Services, the United States or its agents are not liable for infringe-
 2 ment of copyright or analogous rights arising out of use of the mate-
 3 rials for display, inspection, research, reproduction, or other purposes."

4 (c) In section 1498(b) of title 28 of the United States Code, the
 5 phrase "section 101(b) of title 17" is amended to read "section 504(c)
 6 of title 17".

7 (d) Section 543(a) (4) of the Internal Revenue Code of 1954, as
 8 amended, is amended by striking out "(other than by reason of sec-
 9 tion 2 or 6 thereof)".

10 (e) Section 3202(a) of title 39 of the United States Code is
 11 amended by striking out clause (5). Section 3206(c) of title 39 of the
 12 United States Code is amended by striking out clause (c). Section
 13 3206(d) is renumbered (c).

14 (f) In section 6 of the Standard Reference Data Act (section
 15 290(e) of title 15 of the United States Code, Supplement IV), sub-
 16 section (a) is amended to delete the reference to "section 8" and to
 17 substitute therefor the phrase "section 105".

18 Sec. 106. In any case where, before January 1, 1975, a person has
 19 lawfully made parts of instruments serving to reproduce mechan-
 20 ically a copyrighted work under the compulsory license provisions of
 21 section 1(c) of title 17 as it existed on December 31, 1974, he may
 22 continue to make and distribute such parts embodying the same me-
 23 chanical reproduction without obtaining a new compulsory license
 24 under the terms of section 115 of title 17 as amended by this title.
 25 However, such parts made on or after January 1, 1975, constitute
 26 phonorecords and are otherwise subject to the provisions of said
 27 section 115.

28 Sec. 107. In the case of any work in which an ad interim copyright
 29 is subsisting or is capable of being secured on December 31, 1974,
 30 under section 22 of title 17 as it existed on that date, copyright pro-
 31 tection is hereby extended to endure for the term or terms provided
 32 by section 304 of title 17 as amended by this title.

33 Sec. 108. The notice provisions of sections 401 through 403 of title
 34 17 as amended by this title apply to all copies or phonorecords publicly
 35 distributed on or after January 1, 1975. However, in the case of a work
 36 published before January 1, 1975, compliance with the notice provi-
 37 sions of title 17 either as it existed on December 31, 1974, or as amended
 38 by this title, is adequate with respect to copies publicly distributed
 39 after December 31, 1974.

1 SEC. 109. The registration of claims to copyright for which the
2 required deposit, application, and fee were received in the Copyright
3 Office before January 1, 1975, and the recordation of assignments of
4 copyright or other instruments received in the Copyright Office before
5 January 1, 1975, shall be made in accordance with title 17 as it existed
6 on December 31, 1974.

7 SEC. 110. The demand and penalty provisions of section 14 of title 17
8 as it existed on December 31, 1974, apply to any work in which copy-
9 right has been secured by publication with notice of copyright on or
10 before that date, but any deposit and registration made after that date
11 in response to a demand under that section shall be made in accordance
12 with the provisions of title 17 as amended by this title.

13 SEC. 111. Section 2318 of title 18 of the United States Code is
14 amended to read as follows:

15 **"§2318. Transportation, sale or receipt of phonograph records**
16 **bearing forged or counterfeit labels**

17 "Whoever knowingly and with fraudulent intent transports, causes
18 to be transported, receives, sells, or offers for sale in interstate or
19 foreign commerce any phonograph record, disk, wire, tape, film, or
20 other article on which sounds are recorded, to which or upon which is
21 stamped, pasted, or affixed any forged or counterfeited label, knowing
22 the label to have been falsely made, forged, or counterfeited shall be
23 fined not more than \$25,000 or imprisoned for not more than three
24 years, or both, for the first such offense and shall be fined not more than
25 \$50,000 or imprisoned not more than seven years or both, for any sub-
26 sequent offense."

27 SEC. 112. All causes of action that arose under title 17 before Jan-
28 uary 1, 1975, shall be governed by title 17 as it existed when the cause
29 of action arose.

30 SEC. 113. If any provision of title 17, as amended by this title, is
31 declared unconstitutional, the validity of the remainder of the title
32 is not affected.

33 **TITLE II—NATIONAL COMMISSION ON NEW TECHNO-**
34 **LOGICAL USES OF COPYRIGHTED WORKS**

35 **ESTABLISHMENT AND PURPOSE OF COMMISSION**

36 SEC. 201. (a) There is hereby created in the Library of Congress a
37 National Commission on New Technological Uses of Copyrighted
38 Works (hereafter called the Commission).

39 (b) The purpose of the Commission is to study and compile data on:

(1) the reproduction and use of copyrighted works of authorship-

(A) in conjunction with automatic systems capable of storing, processing, retrieving, and transferring information, and

(B) by various forms of machine reproduction, not including reproduction by or at the request of instructors for use in face-to-face teaching activities; and

(2) the creation of new works by the application or intervention of such automatic systems or machine reproduction.

(c) The Commission shall make recommendations as to such changes in copyright law or procedures that may be necessary to assure for such purposes access to copyrighted works, and to provide recognition of the rights of copyright owners.

MEMBERSHIP OF THE COMMISSION

SEC. 202. (a) The Commission shall be composed of thirteen voting members, appointed as follows:

(1) Four members, to be appointed by the President, selected from authors and other copyright owners;

(2) Four members, to be appointed by the President, selected from users of copyright works;

(3) Four nongovernmental members to be appointed by the President, selected from the public generally;

(4) The Librarian of Congress.

(b) The President shall appoint a Chairman, and a Vice Chairman who shall act as Chairman in the absence or disability of the Chairman or in the event of a vacancy in the office, from among the four members selected from the public generally, as provided by clause (3) of subsection (a). The Register of Copyrights shall serve ex officio as a nonvoting member of the Commission.

(c) Seven voting members of the Commission shall constitute a quorum.

(d) Any vacancy in the Commission shall not affect its powers and shall be filled in the same manner as the original appointment was made.

COMPENSATION OF MEMBERS OF COMMISSION

SEC. 203. (a) Members of the Commission, other than officers or employees of the Federal Government, shall receive compensation at the rate of \$100 per day while engaged in the actual performance of Commission duties, plus reimbursement for travel, subsistence, and other necessary expenses in connection with such duties.

1 (b) Any members of the Commission who are officers or employees
2 of the Federal Government shall serve on the Commission without
3 compensation, but such members shall be reimbursed for travel,
4 subsistence, and other necessary expenses in connection with the per-
5 formance of their duties.

6 STAFF

7 SEC. 204. (a) To assist in its studies, the Commission may appoint
8 a staff which shall be an administrative part of the Library of Con-
9 gress. The staff shall be headed by an Executive Director, who shall
10 be responsible to the Commission for the administration of the duties
11 entrusted to the staff.

12 (b) The Commission may procure temporary and intermittent serv-
13 ices to the same extent as is authorized by section 3109 of title 5, United
14 States Code, but at rates not to exceed \$100 per day.

15 EXPENSES OF THE COMMISSION

16 SEC. 205. There are hereby authorized to be appropriated such sums
17 as may be necessary to carry out the provisions of this title.

18 REPORTS

19 SEC. 206. (a) Within one year after the first meeting of the Com-
20 mission it shall submit to the President and the Congress a preliminary
21 report on its activities.

22 (b) Within three years after the enactment of this Act the Com-
23 mission shall submit to the President and the Congress a final report
24 on its study and investigation which shall include its recommenda-
25 tions and such proposals for legislation and administrative action as
26 may be necessary to carry out its recommendations.

27 (c) In addition to the preliminary report and final report required
28 by this section, the Commission may publish such interim reports as
29 it may determine, including but not limited to consultant's reports,
30 transcripts of testimony, seminar reports, and other Commission
31 findings.

32 POWERS OF THE COMMISSION

33 SEC. 207. (a) The Commission or, with the authorization of the
34 Commission, any three or more of its members, may, for the purpose of
35 carrying out the provisions of this title, hold hearings, administer
36 oaths, and require, by subpoena or otherwise, the attendance and testi-
37 mony of witnesses and the production of documentary material.

38 (b) With the consent of the Commission, any of its members may
39 hold any meetings, seminars, or conferences considered appropriate

to provide a forum for discussion of the problems with which it is dealing.

TERMINATION

Sec. 298. On the sixtieth day after the date of the submission of its final report, the Commission shall terminate and all offices and employment under it shall expire.

TITLE III PROTECTION OF ORNAMENTAL DESIGNS OF USEFUL ARTICLES

DESIGNS PROTECTED

Sec. 301. (a) The author or other proprietor of an original ornamental design of a useful article may secure the protection provided by this title upon complying with and subject to the provisions hereof.

(b) For the purposes of this title--

(1) A "useful article" is an article which in normal use has an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information. An article which normally is a part of a useful article shall be deemed to be a useful article.

(2) The "design of a useful article", hereinafter referred to as a "design", consists of those aspects or elements of the article, including its two-dimensional or three-dimensional features of shape and surface, which make up the appearance of the article.

(3) A design is "ornamental" if it is intended to make the article attractive or distinct in appearance.

(4) A design is "original" if it is the independent creation of an author who did not copy it from another source.

DESIGNS NOT SUBJECT TO PROTECTION

Sec. 302. Protection under this title shall not be available for a design that is--

(a) not original;

(b) staple or commonplace, such as a standard geometric figure, familiar symbol, emblem, or motif, or other shape, pattern, or configuration which has become common, prevalent, or ordinary;

(c) different from a design excluded by subparagraph (b) above only in insignificant details or in elements which are variants commonly used in the relevant trades; or

(d) dictated solely by a utilitarian function of the article that embodies it;

(e) composed of three-dimensional features of shape and surface with respect to men's, women's, and children's apparel, including undergarments and outerwear.

REVISIONS, ADAPTATIONS, AND REARRANGEMENTS

1 SEC. 303. Protection for a design under this title shall be available
2 notwithstanding the employment in the design of subject matter ex-
3 cluded from protection under section 302, if the design is a substantial
4 revision, adaptation, or rearrangement of said subject matter: *Pro-*
5 *vided*, That such protection shall be available to a design employing
6 subject matter protected under title I of this Act, or title 35 of the
7 United States Code or this title, only if such protected subject matter is
8 employed with the consent of the proprietor thereof. Such protection
9 shall be independent of any subsisting protection in subject matter
10 employed in the design, and shall not be construed as securing any
11 right to subject matter excluded from protection or as extending any
12 subsisting protection.

COMMENCEMENT OF PROTECTION

14 SEC. 304. (a) The protection provided for a design under this title
15 shall commence upon the date when the design is first made public.
16 (b) A design is made public when, by the proprietor of the design
17 or with his consent, an existing useful article embodying the design
18 is anywhere publicly exhibited, publicly distributed, or offered for
19 sale or sold to the public.

TERM OF PROTECTION

21 SEC. 305. (a) Subject to the provisions of this title, the protection
22 herein provided for a design shall continue for a term of five years
23 from the date of the commencement of protection as provided in sec-
24 tion 304(a), but if a proper application for renewal is received by
25 the Administrator during the year prior to the expiration of the five-
26 year term, the protection herein provided shall be extended for an
27 additional period of five years from the date of expiration of the first
28 five years.

29 b) If the design notice actually applied shows a date earlier than
30 the date of the commencement of protection as provided in section
31 304(a), protection shall terminate as though the term had commenced
32 at the earlier date.

33 (c) Where the distinguishing elements of a design are in substan-
34 tially the same form in a number of different useful articles, the
35 design shall be protected as to all such articles when protected as
36 to one of them, but not more than one registration shall be required.
37 Upon expiration or termination of protection in a particular design
38 as provided in this title all rights under this title in said design shall

1 terminate, regardless of the number of different articles in which the
2 design may have been utilized during the term of its protection.

3 THE DESIGN NOTICE

4 SEC. 306. (a) Whenever any design for which protection is sought
5 under this title is made public as provided in section 304(b), the
6 proprietor shall, subject to the provisions of section 307, mark it or
7 have it marked legibly with a design notice consisting of the following
8 three elements:

9 (1) the words "Protected Design", the abbreviation "Prot'd
10 Des." or the letter "D" within a circle thus ①;

11 (2) the year of the date on which the design was first made
12 public; and

13 (3) the name of the proprietor, an abbreviation by which the
14 name can be recognized, or a generally accepted alternative design-
15 nation of the proprietor; any distinctive identification of the
16 proprietor may be used if it has been approved and recorded by
17 the Administrator before the design marked with such identifica-
18 tion is made public.

19 After registration the registration number may be used instead of
20 the elements specified in (2) and (3) hereof.

21 (b) The notice shall be so located and applied as to give reasonable
22 notice of design protection while the useful article embodying the
23 design is passing through its normal channels of commerce. This re-
24 quirement may be fulfilled, in the case of sheetlike or strip materials
25 bearing repetitive or continuous designs, by application of the notice
26 to each repetition, or to the margin, selvage, or reverse side of the ma-
27 terial at reasonably frequent intervals, or to tags or labels affixed to
28 the material at such intervals.

29 (c) When the proprietor of a design has complied with the provi-
30 sions of this section, protection under this title shall not be affected
31 by the removal, destruction, or obliteration by others of the design
32 notice on an article.

33 EFFECT OF OMISSION OF NOTICE

34 SEC. 307. The omission of the notice prescribed in section 306 shall
35 not cause loss of the protection or prevent recovery for infringement
36 against any person who, after written notice of the design protection,
37 begins an undertaking leading to infringement: *Provided*, That such
38 omission shall prevent any recovery under section 322 against a person
39 who began an undertaking leading to infringement before receiving
40 written notice of the design protection, and no injunction shall be

1 had unless the proprietor of the design shall reimburse said person
 2 for any reasonable expenditure or contractual obligation in connection
 3 with such undertaking incurred before written notice of design protec-
 4 tion, as the court in its discretion shall direct. The burden of proving
 5 written notice shall be on the proprietor.

6 INFRINGEMENT

7 Sec. 308. (a) It shall be infringement of a design protected under
 8 this title for any person, without the consent of the proprietor of
 9 the design, within the United States or its territories or possessions
 10 and during the term of such protection, to—

11 (1) make, have made, or import, for sale or for use in trade,
 12 any infringing article as defined in subsection (d) hereof; or

13 (2) sell or distribute for sale or for use in trade any such
 14 infringing article; *Provided, however,* That a seller or distributor
 15 of any such article who did not make or import the same shall be
 16 deemed to be an infringer only if—

17 (i) be induced or acted in collusion with a manufacturer to
 18 make, or an importer to import such article (merely purchas-
 19 ing or giving an order to purchase in the ordinary course of
 20 business shall not of itself constitute such inducement or
 21 collusion); or

22 (ii) he refuses or fails upon the request of the proprietor
 23 of the design to make a prompt and full disclosure of his
 24 source of such article, and he orders or reorders such article
 25 after having received notice by registered or certified mail
 26 of the protection subsisting in the design.

27 (b) It shall be not infringement to make, have made, import, sell,
 28 or distribute, any article embodying a design created without knowl-
 29 edge of, and copying from, a protected design.

30 (c) A person who incorporates into his own product of manufacture
 31 an infringing article acquired from others in the ordinary course of
 32 business, or who, without knowledge of the protected design, makes or
 33 processes an infringing article for the account of another person in the
 34 ordinary course of business, shall not be deemed an infringer except
 35 under the conditions of clauses (i) and (ii) of paragraph (a) (2) of
 36 this section. Accepting an order or reorder from the source of the in-
 37 fringing article shall be deemed ordering or reordering within the
 38 meaning of clause (ii) of paragraph (a) (2) of this section.

39 (d) An "infringing article" as used herein is any article, the design

of which has been copied from the protected design, without the consent of the proprietor: *Provided, however,* That an illustration or picture of a protected design in an advertisement, book, periodical, newspaper, photograph, broadcast, motion picture, or similar medium shall not be deemed to be an infringing article. An article is not an infringing article if it embodies, in common with the protected design, only elements described in subsections (a) through (d) of section 302.

(e) The party alleging rights in a design in any action or proceeding shall have the burden of affirmatively establishing its originality whenever the opposing party introduces an earlier work which is identical to such design, or so similar as to make a prima facie showing that such design was copied from such work.

APPLICATION FOR REGISTRATION

SEC. 309. (a) Protection under this title shall be lost if application for registration of the design is not made within six months after the date on which the design was first made public as provided in section 304(b).

(b) Application for registration or renewal may be made by the proprietor of the design.

(c) The application for registration shall be made to the Administrator and shall state (1) the name and address of the author or authors of the design; (2) the name and address of the proprietor if different from the author; (3) the specific name of the article, indicating its utility; (4) the date when the design was first made public as provided in section 304(b); and (5) such other information as may be required by the Administrator. The application for registration may include a description setting forth the salient features of the design, but the absence of such a description shall not prevent registration under this title.

(d) The application for registration shall be accompanied by a statement under oath by the applicant or his duly authorized agent or representative, setting forth that, to the best of his knowledge and belief (1) the design is original and was created by the author or authors named in the application; (2) the design has not previously been registered on behalf of the applicant or his predecessor in title; (3) the design has been made public as provided in section 304(b); and (4) the applicant is the person entitled to protection and to registration under this title. If the design has been made public with the design notice prescribed in section 306, the statement shall also describe the exact form and position of the design notice.

1 (e) Error in any statement or assertion as to the utility of the article
 2 named in the application, the design of which is sought to be regis-
 3 tered, shall not affect the protection secured under this title.

4 (f) Errors in omitting a joint author or in naming an alleged joint
 5 author shall not affect the validity of the registration, or the actual
 6 ownership or the protection of the design : *Provided*, That the name of
 7 one individual who was in fact an author is stated in the application.
 8 Where the design was made within the regular scope of the author's
 9 employment and individual authorship of the design is difficult or im-
 10 possible to ascribe and the application so states, the name and address
 11 of the employer for whom the design was made may be stated instead
 12 of that of the individual author.

13 (g) The application for registration shall be accompanied by two
 14 copies of a drawing or other pictorial representation of the useful
 15 article having one or more views, adequate to show the design, in a
 16 form and style suitable for reproduction, which shall be deemed a
 17 part of the application.

18 (h) Related useful articles having common design features may be
 19 included in the same application under such conditions as may be pre-
 20 scribed by the Administrator.

21 BENEFIT OF EARLIER FILING DATE IN FOREIGN COUNTRY

22 Sec. 310. An application for registration of a design filed in this
 23 country by any person who has, or whose legal representative or pred-
 24 ecessor or successor in title has previously regularly filed an applica-
 25 tion for registration of the same design in a foreign country which af-
 26 fords similar privileges in the case of applications filed in the United
 27 States or to citizens of the United States shall have the same effect
 28 as if filed in this country on the date on which the application was
 29 first filed in any such foreign country, if the application in this country
 30 is filed within six months from the earliest date on which any such
 31 foreign application was filed.

32 OATHS AND ACKNOWLEDGMENTS

33 Sec. 311. Oaths and acknowledgments required by this title may be
 34 made before any person in the United States authorized by law to
 35 administer oaths, or, when made in a foreign country, before any
 36 diplomatic or consular officer of the United States authorized to ad-
 37 minister oaths, or before any official authorized to administer oaths in
 38 the foreign country concerned, whose authority shall be proved by a
 39 certificate of a diplomatic or consular officer of the United States, and

1 shall be valid if they comply with the laws of the state or country
2 where made.

3 EXAMINATION OF APPLICATION AND ISSUE OR REFUSAL OF REGISTRATION

4 Sec. 312. (a) Upon the filing of an application for registration in
5 proper form as provided in section 309, and upon payment of the fee
6 provided in section 315, the Administrator shall determine whether
7 or not the application relates to a design which on its face appears to
8 be subject to protection under this title, and if so, he shall register the
9 design. Registration under this subsection shall be announced by
10 publication.

11 (b) If, in his judgment, the application for registration relates to
12 a design which on its face is not subject to protection under this title,
13 the Administrator shall send the applicant a notice of his refusal to
14 register and the grounds therefor. Within three months from the date
15 the notice of refusal is sent, the applicant may request, in writing, re-
16 consideration of his application. After consideration of such a request,
17 the Administrator shall either register the design or send the applicant
18 a notice of his final refusal to register.

19 (c) Any person who believes he is or will be damaged by a registra-
20 tion under this title may, upon payment of the prescribed fee, apply
21 to the Administrator at any time to cancel the registration on the
22 ground that the design is not subject to protection under the provisions
23 of this title, stating the reasons therefor. Upon receipt of an applica-
24 tion for cancellation, the Administrator shall send the proprietor of
25 the design, as shown in the records of the Office of the Administrator, a
26 notice of said application, and the proprietor shall have a period of
27 three months from the date such notice was mailed in which to present
28 arguments in support of the validity of the registration. It shall also
29 be within the authority of the Administrator to establish, by regula-
30 tion, conditions under which the opposing parties may appear and be
31 heard in support of their arguments. If, after the periods provided for
32 the presentation of arguments have expired, the Administrator deter-
33 mines that the applicant for cancellation has established that the de-
34 sign is not subject to protection under the provisions of this title, he
35 shall order the registration stricken from the record. Cancellation
36 under this subsection shall be announced by publication, and notice of
37 the Administrator's final determination with respect to any application
38 for cancellation shall be sent to the applicant and to the proprietor
39 of record.

1 (d) Remedy against a final adverse determination under subpara-
 2 graphs (b) and (c) above may be had by means of a civil action
 3 against the Administrator pursuant to the provision of section 1361 of
 4 title 28, United States Code, if commenced within such time after such
 5 decision, not less than 60 days, as the Administrator appoints.

6 (e) When a design has been registered under this section, the lack
 7 of utility of any article in which it has been embodied shall be no
 8 defense to an infringement action under section 320, and no ground
 9 for cancellation under subsection (c) of this section or under sec-
 10 tion 323.

11 CERTIFICATION OF REGISTRATION

12 SEC. 313. Certificates of registration shall be issued in the name of
 13 the United States under the seal of the Office of the Administrator and
 14 shall be recorded in the official records of that Office. The certificate
 15 shall state the name of the useful article, the date of filing of the appli-
 16 cation, the date on which the design was first made public as provided
 17 in section 304 (b) or any earlier date as set forth in section 305 (b), and
 18 shall contain a reproduction of the drawing or other pictorial repre-
 19 sentation showing the design. Where a description of the salient fea-
 20 tures of the design appears in the application, this description shall
 21 also appear in the certificate. A renewal certificate shall contain the
 22 date of renewal registration in addition to the foregoing. A certificate
 23 of initial or renewal registration shall be admitted in any court as
 24 prima facie evidence of the facts stated therein.

25 PUBLICATION OF ANNOUNCEMENTS AND INDEXES

26 SEC. 314. (a) The Administrator shall publish lists and indexes of
 27 registered designs and cancellations thereof and may also publish the
 28 drawing or other pictorial representations of registered designs for
 29 sale or other distribution.

30 (b) The Administrator shall establish and maintain a file of the
 31 drawings or other pictorial representations of registered designs,
 32 which file shall be available for use by the public under such condi-
 33 tions as the Administrator may prescribe.

34 FEES

35 SEC. 315. (a) There shall be paid to the Administrator the follow-
 36 ing fees:

37 (1) On filing each application for registration or for renewal of
 38 registration of a design, \$15.

39 (2) For each additional related article included in one application,
 40 \$10.

(3) For recording assignment, \$3 for the first six pages, and for each additional two pages or less, \$1.

(4) For a certificate of correction of an error not the fault of the Office, \$10.

(5) For certification of copies or records, \$1.

(6) On filing each application for cancellation of a registration, \$15

(b) The Administrator may establish charges for materials or services furnished by the Office, not specified above, reasonably related to the cost thereof.

REGULATIONS

SEC. 316. The Administrator may establish regulations not inconsistent with law for the administration of this title.

COPIES OF RECORDS

SEC. 317. Upon payment of the prescribed fee, any person may obtain a certified copy of any official record of the Office of the Administrator, which copy shall be admissible in evidence with the same effect as the original.

CORRECTION OF ERRORS IN CERTIFICATES

SEC. 318. The Administrator may correct any error in a registration incurred through the fault of the Office, or, upon payment of the required fee, any error of a clerical or typographical nature not the fault of the Office occurring in good faith, by a certificate of correction under seal. Such registration, together with the certificate, shall thereafter have the same effect as if the same had been originally issued in such corrected form.

OWNERSHIP AND TRANSFER

SEC. 319. (a) The property right in a design subject to protection under this title shall vest in the author, the legal representatives of a deceased author or of one under legal incapacity, the employer for whom the author created the design in the case of a design made within the regular scope of the author's employment, or a person to whom the rights of the author or of such employer have been transferred. The person or persons in whom the property right is vested shall be considered the proprietor of the design.

(b) The property right in a registered design, or a design for which an application for registration has been or may be filed, may be assigned, granted, conveyed, or mortgaged by an instrument in writing, signed by the proprietor, or may be bequeathed by will.

1 (c) An acknowledgement as provided in section 311 shall be prima
2 facie evidence of the execution of an assignment, grant, conveyance,
3 or mortgage.

4 (d) An assignment, grant, conveyance, or mortgage shall be void
5 as against any subsequent purchaser or mortgage for a valuable con-
6 sideration, without notice, unless it is recorded in the Office of the
7 Administrator within three months from its date of execution or prior
8 to the date of such subsequent purchase or mortgage.

9

REMEDY FOR INFRINGEMENT

10 SEC. 320. (a) The proprietor of a design shall have remedy for in-
11 fringement by civil action instituted after issuance of a certificate of
12 registration of the design.

13 (b) The proprietor of a design may have judicial review of a final
14 refusal of the Administrator to register the design, by a civil action
15 brought as for infringement if commenced within the time specified
16 in section 312(d), and shall have remedy for infringement by the same
17 action if the court adjudges the design subject to protection under this
18 title: *Provided*, That (1) he has previously duly filed and duly pros-
19 ecuted to such final refusal an application in proper form for regis-
20 tration of the designs, and (2) he causes a copy of the complaint in
21 action to be delivered to the Administrator within ten days after the
22 commencement of the action, and (3) the defendant has committed acts
23 in respect to the design which would constitute infringement with
24 respect to a design protected under this title.

25

INJUNCTION

26 SEC. 321. The several courts having jurisdiction of actions under
27 this title may grant injunctions in accordance with the principles of
28 equity to prevent infringement, including in their discretion, prompt
29 relief by temporary restraining orders and preliminary injunctions.

30

RECOVERY FOR INFRINGEMENT, AND SO FORTH

31 SEC. 322. (a) Upon finding for the claimant the court shall award
32 him damages adequate to compensate for the infringement, but in
33 no event less than the reasonable value the court shall assess them.
34 In either event the court may increase the damages to such amount,
35 not exceeding \$5,000 or \$1 per copy, whichever is greater, as to the
36 court shall appear to be just. The damages awarded in any of the
37 above circumstances shall constitute compensation and not a penalty.
38 The court may receive expert testimony as an aid to the determination
39 of damages.

(b) No recovery under paragraph (a) shall be had for any infringement committed more than three years prior to the filing of the complaint.

(c) The court may award reasonable attorney's fees to the prevailing party. The court may also award other expenses of suit to a defendant prevailing in an action brought under section 320(b).

(d) The court may order that all infringing articles, and any plates, molds, patterns, models, or other means specifically adapted for making the same be delivered up for destruction or other disposition as the court may direct.

POWER OF COURT OVER REGISTRATION

Sec. 323. In any action involving a design for which protection is sought under this title, the court when appropriate may order registration of a design or the cancellation of a registration. Any such order shall be certified by the court to the Administrator, who shall make appropriate entry upon the records of his Office.

LIABILITY FOR ACTION ON REGISTRATION FRAUDULENTLY OBTAINED

Sec. 324. Any person who shall bring an action for infringement knowing that registration of the design was obtained by a false or fraudulent representation materially affecting the rights under this title, shall be liable in the sum of \$1,000, or such part thereof as the court may determine, as compensation to the defendant, to be charged against the plaintiff and paid to the defendant, in addition to such costs and attorney's fees of the defendant as may be assessed by the court.

PENALTY FOR FALSE MARKING

Sec. 325. (a) Whoever, for the purpose of deceiving the public, marks upon, or applies to, or uses in advertising in connection with any article made, used, distributed, or sold by him, the design of which is not protected under this title, a design notice as specified in section 306 or any other words or symbols importing that the design is protected under this title, knowing that the design is not so protected, shall be fined not more than \$500 for every such offense.

(b) Any person may sue for the penalty, in which event, one-half shall go to the person suing and the other to the use of the United States.

PENALTY FOR FALSE REPRESENTATION

Sec. 326. Whoever knowingly makes a false representation materially affecting the rights obtainable under this title for the purpose of obtaining registration of a design under this title shall be fined

1 not less than \$500 and not more than \$1,000, and any rights or privi-
 2 leges he may have in the design under this title shall be forfeited.

3 RELATION TO COPYRIGHT LAW

4 Sec. 327. (a) Nothing in this title shall affect any right or remedy
 5 now or hereafter held by any person under title I of this Act.

6 (b) When a pictorial, graphic, or sculptural work in which copy-
 7 right subsists under title I of this Act is utilized in an original orna-
 8 mental design of a useful article, by the copyright proprietor or under
 9 an express license from him, the design shall be eligible for protection
 10 under the provisions of this title.

11 RELATION TO PATENT LAW

12 Sec. 328. (a) Nothing in this title shall affect any right or remedy
 13 available to or held by any person under title 35 of the United States
 14 Code.

15 (b) The issuance of a design patent for an ornamental design for
 16 an article of manufacture under said title 35 shall terminate any pro-
 17 tection of the design under this title.

18 COMMON LAW AND OTHER RIGHTS UNAFFECTED

19 Sec. 329. Nothing in this title shall annul or limit (1) common law
 20 or other rights or remedies, if any, available to or held by any person
 21 with respect to a design which has not been made public as provided
 22 in section 304(b), or (2) any trademark right or right to be protected
 23 against unfair competition.

24 ADMINISTRATOR

25 Sec. 330. The Administrator and Office of the Administrator re-
 26 ferred to in this title shall be such officer and office as the President
 27 may designate.

28 SEVERABILITY CLAUSE

29 Sec. 331. If any provision of this title or the application of such
 30 provision to any person or circumstance is held invalid, the remainder
 31 of the title or the application to other persons or circumstances shall
 32 not be affected thereby.

33 AMENDMENT OF OTHER STATUTES

34 Sec. 332. (a) Subdivision (2) of section 70 of the Bankruptcy
 35 Act of July 1, 1898, as amended (11 U.S.C. 110(a)), is amended
 36 by inserting "designs," after "patent rights," and "design registra-
 37 tion," after "application for patent,".

38 (b) Title 28 of the United States Code is amended--

(1) by inserting "designs," after "patents," in the first sentence of section 1338(a);

(2) by inserting ", design," after "patent" in the second sentence of section 1338(a);

(3) by inserting "design," after "copyright," in section 1338(b);

(4) by inserting "and register designs" after "copyrights" in section 1440; and

(5) by revising section 1498(a) to read as follows:

"(a) Whenever a registered design or invention is used or manufactured by or for the United States without license of the owner thereof or lawful right to use or manufacture the same, the owner's remedy shall be by action against the United States in the Court of Claims for the recovery of his reasonable and entire compensation for such use and manufacture.

"For the purposes of this section, the use or manufacture of a registered design or an invention described in and covered by a patent of the United States by a contractor, a subcontractor, or any person, firm, or corporation for the Government and with the authorization or consent of the Government, shall be construed as use or manufacture for the United States.

"The court shall not award compensation under this section if the claim is based on the use or manufacture by or for the United States of any article owned, leased, used by, or in the possession of the United States, prior to, in the case of an invention, July 1, 1918, and in the case of a registered design, July 1, 1976.

"A Government employee shall have the right to bring suit against the Government under this section except where he was in a position to order, influence, or induce use of the registered design or invention by the Government. This section shall not confer a right of action on any registrant or patentee or any assignee of such registrant or patentee with respect to any design created by or invention discovered or invented by a person while in the employment or service of the United States, where the design or invention was related to the official functions of the employee, in cases in which such functions included research and development, or in the making of which Government time, materials, or facilities were used."

TIME OF TAKING EFFECT

Sec. 333. This title shall take effect one year after enactment of this Act.

1 NO RETROACTIVE EFFECT

2 Sec. 334. Protection under this title shall not be available for any
3 design that has been made public as provided in section 304(b) prior
4 to the effective date of this title.

5 SHORT TITLE

6 Sec. 335. This title may be cited as "The Design Protection Act of
7 1973".

Passed the Senate September 9, 1974.

Attest:

FRANCIS R. VALEO,

Secretary.